

Les Cahiers d'Afrique de l'Est

Special Issue

The General Elections in Kenya, 2007

Edited by Jérôme Lafargue

May - August 2008
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(IFRA)

The General Elections in Kenya, 2007

Special Issue

Les Cahiers d'Afrique de l'Est, n° 38

Nairobi, May – August 2008

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The General Elections in Kenya, 2007

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The General Elections in Kenya, 2007

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INTRODUCTION

This book is a translation of a special issue of IFRA's journal *Les Cahiers d'Afrique de l'Est*, n°37, and of a collection of articles from *Politique africaine*, n°109. These both focused on the General Elections in Kenya at the end of 2007. The on-site presence of several researchers (Bernard Calas, Anne Cussac, Dominique Connan, Musambayi Katumanga, Jérôme Lafargue, Patrick Mutahi), fieldwork carried out by others between December 2007 and February 2008 (Florence Brisset-Foucault, Ronan Porhel, Brice Rambaudo), as well as a good knowledge of the country by researchers on regular visits (Claire Médard, Hervé Maupeu), were all ingredients that led to the production of hundreds of pages within a limited period. These articles were actually published in April 2008. Some political information has not been updated but this changes nothing in terms of the initial aim of taking into account and analyzing the events that set the country on fire for several weeks.

However, since April 2008, the situation—to all intents and purposes—stabilized. The coalition government took shape, with Mwai Kibaki remaining President while Raila Odinga became the Prime Minister as an appeasement Nevertheless. Nothing has been decided yet—far from it—and no one is fooled by this ill-matched coupling. The government's prevarications on sensitive issues (employment, land, internally displaced people, rising prices) and the recently discovered serious corruption incidents do not help to maintain a climate of confidence. Within the two main political party formations, there is great tension and it cannot be said for a fact that these structures will prevail to the end of the year. Whereas some ministers engage in fierce battles for powerful positions within their party, others do not hesitate to declare themselves as candidates for the next presidential elections. This remains the main challenge—who will take over the reins from

Kibaki? As the on-going presidential mandate has barely begun, is it a mere stopgap to the next elections in 2012? The country, more so than ever, is truly in suspense. This includes the donors, who had made it possible for Kenya to restore a semblance of peace. But to what point will they be interested in investing in the country and to protect their place in it?

The tone of this book may, undoubtedly, not sound highly optimistic. However, this should not dampen the unanimous sense of hope in the country that the political and social situation will once more be more than just tolerable.

Jérôme Lafargue

9 September 2008

A COUNTRY IN SUSPENSE:

Political fallout and popular anxiety

*Jérôme Lafargue**

The widespread violence and turmoil that followed the announcement of the December 2007 presidential election results will undoubtedly leave a mark on Kenyan politics for a long time but its effects on the daily lives of millions of people is also very important. Several dynamics are already in motion (social renegotiations within the main ethnic communities, especially concerning relations between the youth and elders; realignment of ties between business environment and the world of politics). More issues are emerging, even though it is still too early to completely assess this (from changes in social representation with regard to political matters, to ethnicity). There are several unknowns, especially because the negotiations for the appointment of a reconciliation cabinet have been protracted. The positions are coveted, not only because of possibilities of a ministerial position but also in view of future presidential elections.

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Five years, is after all a very short period in politics.¹

Although the negotiations conducted by Kofi Annan for more than a month were concluded on 28 February 2008 with a power-sharing agreement in principle,² a lot remains to be done, beginning with the appointment of coalition partners. Who will R. Odinga's deputy prime ministers be? By the beginning of April 2008, Musalia Mudavadi was an undisputed name in ODM, but it was not yet obvious who the choice of PNU would be—the jostling between Uhuru Kenyatta, representing KANU, and Martha Karua, a close ally of M. Kibaki, was very tough. Nothing had been agreed upon on the sharing of key ministerial positions (e.g. foreign affairs, local government, transport). It was a strange period of suspense in which the power struggle seemed to overshadow the enormous difficulties that the internally displaced

¹ Presidential and parliamentary elections were held on 27 December 2007. According to the Electoral Commission of Kenya (ECK), the outgoing President Mwai Kibaki, was re-elected on the ticket of a new coalition called Party of National Unity (PNU, created a few weeks before the polls) with 4,584,721 votes (46%) against 4,352,903 (44%) garnered by Raila Odinga, leader of ODM (Orange Democratic Movement, a coalition formed during the 2005 referendum debate) and 879,903 (9%) garnered by Kalonzo Musyoka (ODM-Kenya). Voter-turnout was estimated at about 69%. In the parliamentary elections, ODM (99 seats) defeated PNU by a wide margin (43 seats), ODM-K (16 seats) and Kenya African National Union (KANU), the former single party (14 seats) thus confirming its decline. At the same time, Kenyans also elected their civic leaders and the results of the civic polls, in which ODM had a comfortable lead, were only announced in January. Indeed, the announcement of the presidential poll results, due to rumours of rigging perpetrated by the incumbent, led to violent riots that were followed by skirmishes in the country, particularly in Western Province, Nyanza Province, Rift Valley Province, some parts of Central Province, as well as Nairobi, in the slum areas of Kibera, Mathare, Kawangware, Korogocho, Dandora, Huruma and Kariobangi. The initial social revolt paved the way for tribal clashes that put long-standing grievances into perspective, especially land allocation. The former UN Secretary-General Kofi Annan, who arrived in Kenya on 22 January, seemed to be the only one able to conduct a mediation process that would bear fruits. However, for an agreement to finally be reached at the end of February, he had to suspend talks between ODM and PNU representatives to a peace talks committee and meet R. Odinga and M. Kibaki directly while some donors also applied intense pressure. For more on these events, refer to the special collection on African Politics, referred to in note 4 below.

² On 18 March, parliament passed the constitutional amendment that created the prime minister's position. See 'Historic moment', *Daily Nation*, 19 March 2008.

persons were experiencing. It was also a strange period with power vacuum, leading the casual observer and citizen alike to wonder when the real challenges facing the country would be settled, beginning with employment and the land embroilment.³

The subsequent spiralling skirmishes and violence during the months of January and February 2008 displaced hundreds of thousands and led to more than one thousand deaths. An initial assessment of the elections and the violence has been made further in this volume⁴. This paper will concentrate on a set of themes that seem essential for both an understanding of the stakes in the conflict and to weigh the medium-term consequences.

Hervé Maupeu revisits the violence that occurred across the country. He outlines the various interpretations put forward during the crisis and clearly shows that political and electoral violence can be different in nature. He thus attempts to bring out the elements that help explain why the announcement of the election results was followed by such large-scale unrest. By tracing R. Odinga's political evolution and the consolidation of his tools of control, it becomes clearer that in 2007, the opposition had a better oiled political machine than ever before. The establishment expected a reaction if M. Kibaki was re-elected but it had not imagined the reaction would reach the heights that it did.

³ The beginning of April is symbolic of the ambivalent atmosphere. A confidential report by the ECK was leaked under unusual circumstances in Mombasa on 9 March by a human rights organisation, Kenyans for Peace with Truth and Justice. The report revealed several irregularities during the vote counting and tallying procedures (*The Standard*, 1st April 2008). The same day, the police broke up a protest march staged by about hundred members of the civil society (including Wangari Maathai, Nobel peace laureat, and Maina Kiai, chairman of Kenya National Human Rights Commission), denouncing procrastination in the appointment of the new cabinet (*The Standard*, 2 April 2008).

⁴ On this subject, refer to the papers by Anne Cussac, '*Kibaki tena?* The contested results of an explosively high stakes election'; Jérôme Lafargue and Musambayi Katumanga, 'Kenya in turmoil. Post election violence and precarious pacification'; Claire Médard, 'Elected leaders, militias and prophets. Violence in Mount Elgon, Kenya, 2006–2008'; Bernard Calas, 'From fraud to violence: Mapping political retrogradation').

Hervé Maupeu uses the conflicts in the Rift Valley to illustrate the mechanism of violence from a social and historical perspective. Indeed, the 2007 elections reactivated the sources of tension in this province, some going back to the massacres of the 1990s, and also as far back as the Mau Mau crisis of the 1950s, while some do not directly echo the anti-colonial revolts of the 1920s. Taking Molo, Kuresoi and the Mau Forest as examples, he unravels the motives of the often fragile political strategies as well as the extremely sensitive role of land allocation in the search for stability (or in some cases instability). Finally, Maupeu offers leads in understanding the complex attitude of the police, particularly in urban areas (Kisumu and Nairobi), as they sought to quell the violence.

As demonstrated by Ronan Porhel, who begins by discussing the essential role that Kenya plays in the region, there were many economic consequences of the unrests, even though the financial markets strongly withstood the uncertainty. The tourism sector was the most affected by the crisis: cancellation of flights and tours, withdrawal of companies, massive layoffs. Many farms suffered because of destruction through looting, settling of scores or because workers could not access their work places due to roadblocks or lack of road transport. The crisis also simultaneously affected the banking sector and the small enterprises directly engaged in micro-credit systems. Recovery was slow everywhere and regaining the level of activity comparable to 2007, in the tourism, agricultural or the business sector would take several months, or even more than a year.

Claire Médard then attempts to explain the crisis from the land dimension. The skirmishes surprised observers by the scale of violence, their intensity and their spontaneous nature. The degeneration into ethnic clashes heightened concern and fear of their spiralling out of control. However, they had not all been politically instigated but the conflict, particularly in the rural areas showed the seriousness of

the regional grievances, marked by land expropriation issues, ethnic considerations and land privatization. Claire Médard attempts to untangle the complex web of the multiple ethnic demands, some of which were the underlying causes of violence. By so doing, she aptly demonstrates to what extent the notion of ethnicity can become completely rigid depending on the situation, how it was used by the communities themselves with a view to political assertion and in the hope of regaining grabbed land. Finally, in order to tackle the sole issues which remain important—protecting the rights of the poorest and their access to land, Claire Médard endeavours to establish, backed by examples, the role played by these ethnic-based demands and their role in converting politics into a tool. Is a peaceful settlement of the land problem really possible after decades of poor management and land expropriation?

However, several institutions seem weak. The political crisis exposed the extent of their shortcomings. Starting with the example of the ECK, Anne Cussac outlines the origins of its numerous shortfalls. She revisits the beginnings of the electoral commission and its composition and reveals the social network stakes that permeate Kenyan politics. The failure by the commission to guarantee free and fair elections will leave its mark, not so much on the institution's credibility, which is already at its lowest ebb, but on the understanding of the democratic process itself by citizens. Anne Cussac also pinpoints the merely theoretical independence of the judiciary that has been perverted by political schemes and strategies. Has the death knell sounded for the Kenyan political model in spite of the election of a new parliament? The ODM brought in new faces, most of whom are young, and will perhaps be able to provide a breath of fresh air into Kenyan politics. However, the question that lingers is the institutional framework within which they will evolve.

What can the civil society do under these circumstances, and more importantly, what did it achieve in the events that marked the beginning of the year? Hervé Maupeu dwells lengthily on the stalemate the Christian churches found themselves in. Under the Moi era, the political divisions were clear-cut: the moral side was indisputably in the opposition camp. Hence the most influential churches helped M. Kibaki take over power. Even further, they endorsed his policies, including during the most critical moments such as the 2005 referendum and the 2007 election campaigns. How then, could they, during the post-election unrests, criticize or denounce the same people they had supported for five years? The quest for some neutrality, by calling for consensus between the protagonists, did not seem credible. Christian churches, which were once the backbone of the civil society, need to redefine their role in politics. In contrast, Muslim organizations emerged from the crisis holding their heads high: they showed their capacity to influence the vote of their faithful and knew how to control the gangs of looters who were quick to hijack the various causes under false pretences. Finally, Hervé Maupeu revisits the black spot of unrests and the issue of militias, using the example of the most important and probably the most complex of them all, Mungiki. Without an analysis of this group from a religious perspective, one is likely to miss out an important dimension of its influence, which is not only felt in the political arena but also in the redefinition of the relationship between the youth and the elders, notably within the Kikuyu ethnic community. Understanding the Mungiki movement is a challenge for social studies: people simply want to view it as a gang of youth politically organized to cause mayhem, yet a number of them refused to participate in the excesses perpetrated in January and February 2008, for instance. Above all, the Mungiki religious and revivalist scope should not be overlooked, as it revolves around prophetism and the memory of the Mau Mau, reminiscent of the resistance movement's rituals in the 1950s. The tension between State leadership and the Mungiki is significant—sometimes it is useful, sometimes it is on the 'most wanted' list. The Kibaki regime's

treatment of the sect clearly shows the shape that the intra-Kikuyu civil war is taking. There are numerous social barriers within this ethnic group and they prevent accomplishments, especially by the young. The return of the warrior image and the recourse to violence can under these circumstances become the means to success that they cannot access through other means. From a pacifist perspective, where are human rights organizations? The final comment made by Dominique Connan is not exactly optimistic. The ability to influence events by this strand of the civil society has not changed over the last ten years. This is more so because its sense of responsible citizenship was whittled down by its relative inertia over the unequal distributions of the gains of economic growth during Kibaki's first term in office. Civil society organizations participated in the 2005 constitutional debate. They mobilized during the election campaigns and were among the first to unite in expressing their indignation and denouncing the manipulation of the polls. However, there were divisions within the civil society. This is demonstrated by the divergence in the interpretation of the crisis, with a split between a group considering peace as an indisputable option through negotiations with the government, and another group, sharply opposed to this position. In contrast, some groups engaged in trying to propose several ways out of the crisis. During this period, other fissures of discord emerged, exposing the disparity in the aspirations of members of the organizations. Splits, cases of reconstitution and continued occupation of office were the order of the day in these organizations, which was evidence that even within this sector, network battles were equally vicious.

The last part of this publication focuses on the role played by the media and the pollsters, both during the campaigns and after. Brice Rambaud casts the spotlight on the increasing independence of the mainstream media *vis-à-vis* the political class, which does not stop it from targeting political links, like economic dependency by some media houses. The emergent media panorama is inspiring, in terms of diversity of the available press and radios. Vernacular radio stations

were eager to do anything possible to ethnically slant their material. The press was unrelenting in its focus on election contest, sometimes relegating other topics to the very last pages. The media coverage made it possible to identify the general tendencies such as the micro-stakes at play in the campaigns. The elections were also the subject of significant coverage on television and on the web, with the creation of websites dedicated to the main candidates as well as the creation of blogs by journalists. Brice Rambaud then endeavours to study the manner in which the press reported the post-election violence. He explains the double act of informing and condemning the violence. More generally, he talks about proactive journalism to define the attitude of media professionals towards the events, whilst they had to protect themselves against hawk-eyed government censorship, especially as far as television coverage was concerned. A study of the initial days of the crisis shows the sometimes frustrated willingness of journalists to provide the most informative and objective news information. On her part, Florence Brisset-Foucault, after analyzing the origins of political communication in Kenya, concentrates on television, particularly the talk-shows. She expresses apprehension over professionalism in the talk-shows and emphasizes the moral and political models that are projected and defended at the talk-shows, or which the presenter sometimes misses out. She therefore is in a position to give an overview of the contrasting points of view of the politician, where the ideas of fair and balanced coverage depend on shifty arrangements. She also demonstrates that the broadcasts discouraged personality politics and preferred individuals to the problems they claimed to seek to solve or the causes they sought to stand for. Personal productions have also been described, and it is worth noting that they are either based on the expression of political convictions or ethnic leanings. Finally, Patrick Mutahi presents us with the first overview of the role of opinion polls in politics. Used like never before, these tools were subjected to multiple political interpretations. Of particular significance was the issue of reliability, which proved to be sensitive during election campaigns, and rapidly indicated that

the race between the two leading candidates would be tight. Mutahi also tackles the ambiguous role sometimes played by pollsters, based on ethnic orientation and political preferences. At the end of the day, while noting that the public had never been properly informed about the methods used by the pollsters, the system is found to be too opaque to be genuinely credible.

Democracy is undoubtedly in its infancy in Kenya. However, despite the traumatic violence that occurred, it is not necessarily built on ruins today. A few strong foundations remain standing and some pillars still seem quite strong, such as freedom of speech or the right to legally oppose. The institutional and governmental ups and downs since March 2008 have been closely followed by voters, but a degree of weariness is now unsurprisingly catching up with them. The disappointment over the scale of electoral fraud, whose proof becomes more evident with the release of various reports,⁵ comes with real mistrust of the political class by citizens and a questioning, which should be taken very seriously, of the usefulness of the ballot. Added to this is the meaning of democracy and the ability of politics to solve the most urgent problems, be they economic or social.⁶ The expectations of citizens in Kenya have risen highly. Will the political class be able to promptly respond?

⁵ European Union Elections Observation Mission, « *Preliminary statement : doubts about the credibility of the presidential results hamper Kenya's democratic progress* », 1st January 2008 ; Commonwealth Secretariat, « *Kenya general election, 27 December 2007 : the report of the Commonwealth Observer Group* », January 2008 ; Kenya Elections Domestic Observation Forum, « *Preliminary statement and verdict of the 2007 Kenya's general elections* », 31 December 2007 ; East African Community Observer Mission, « *Report on the Kenya general elections, December 2007* », January 2008 ; International Crisis Group (ICG), *Kenya in Crisis*, Africa Report No 137, 21 February 2008 ; Human Rights Watch, *Ballots to Bullets. Organized Political Violence and Kenya's Crisis of Governance*, March 2008.

⁶ It would be interesting to closely examine these themes within political science, philosophy and history, using broad sociological surveys.

KENYA IN TURMOIL:

Post-election violence and precarious pacification

*Jérôme Lafargue and Musambayi Katumanga**

Introduction

The announcement of the presidential poll results caused a massive outpouring of violence. It led to the loss of several hundred human lives and forced a tens of thousands others to flee their homes. These events cast light on the multiple problems (social controversy, political sclerosis, land inequalities and escalating crime in the society) that Kenya faces as a State.

Is Kenya a country of illusions and shortcuts? Praised just a short while ago for its political stability and economic growth, everything was disrupted in the last few days of 2007: election rigging, police repression, hard-line positions by cliques, information blackout, bloody settling of scores, reactivation of ethnic tensions, political assassinations, destruction of property, deaths by the hundreds... there is little missing from the panoply of a continent in crisis. The daily life of Kenyans was disrupted. Political conflict, social revolt and the crystallization of ethnic rivalries combined with growing opportunistic crime in a worrying trend. A brief look at these events will be followed by an attempt to understand the far-reaching failings in Kenya's history and society which some leading political players embraced, perhaps for the worst.

* Jérôme Lafargue is the deputy director of IFRA and a political scientist, while Musambayi Katumanga is a lecturer in political science at the University of Nairobi.

OUTBURSTS: INCREASED FORMS OF VIOLENCE

In Kenya there is a tradition of political violence, be it State-sponsored or private, which climaxes during elections, especially since the inception of multiparty politics in 1991. The use of ethnicity in political debate and in social relations, both as inward-looking censure and a means of renegotiating social relations, brings about tensions at the height of these instances. The face-off over the presidency between a Kikuyu, outgoing President Mwai Kibaki, and a Luo, Raila Odinga, who hails from one of the country's two main ethnic communities,¹ led to fears of excesses.

The election campaigns were verbally very virulent and shortly after the nominations for parliamentary elections, human rights organizations in Kenya denounced the instances of intimidation and murder. The agitation served as some sort of pre-electoral "ritual", which leads to its fair share of deaths during every election period. All the same, the voters kept their votes, localising democratic deadline better than their political elite, who yielded to their old habits.

On 30 December 2007, after three days of uncertainty, the Electoral Commission of Kenya (ECK) Chairman, Samuel Kivuitu, announced Kibaki's re-election amidst chaos.² From the unofficial figures regularly communicated by the media, many expected a win by Odinga, who was leading by several hundred thousand votes after the second round of counting. However, votes from Central Province and North Eastern Province, which were favourable to Kibaki, were

¹ The Kikuyu make up about 22% of the population, Luhya 14%, Luo 13%, Kalenjin 12% and Kamba 11%. Kenya has more than 40 ethnic communities, some of which are integrated in large communities. For example, the Kalenjin community was formed in the 1940s to bring together several ethnic communities (Kipsigis, Nandi, Tugen, Keiyo, Marakwet in particular) and came up a common standard dialect, initially referred to as Nandi.

² According to the ECK, Kibaki (Party of National Unity-PNU) won the presidential election with 4,584,721 votes (46%), against 4,352,903 (44%) garnered by Odinga (Orange Democratic Movement, ODM) and 879,903 (9%) garnered by Kalonzo Musyoka (ODM-Kenya, ODM-K). Voter turnout was estimated at 69%. During the same elections, Kenyans elected their parliamentarians: ODM (99 seats) won by a landslide ahead of PNU (43 seats), ODM-K (16 seats) and Kenya African National Union (KANU), former single party, which saw its decline sealed (14 seats).

yet to be counted. Last-minute manipulations toppled over all this.³ Soon after the announcement of the results, Nairobi was engulfed in violence, especially the slums that heavily supported Odinga, along with several big towns in the Rift Valley (Eldoret), Nyanza (Kisumu) and Coast Province (Mombasa)⁴. After several tempestuous days, during which the violence reached its peak on 3 January 2008, hundreds of deaths and tens of thousands of displaced persons were reported.⁵ The violence paralysed the country's economy⁶ and revived ethnic tensions that had been largely dormant.

There seemed to be evidence of election rigging by the government using various mechanisms.⁷ To a lesser extent ODM also seemed to have participated in rigging. Popular vindication built up as more and more signs of manipulation were denounced by ODM as well as European Union and Commonwealth observers, followed by local NGOs and some ECK commissioners.⁸

³ For the electoral map, refer to paper by Bernard Calas in this volume.

⁴ In reality, the initial riots, which had taken place on 29 December (in Kisumu, Kericho and in Nairobi's Kibera slums) involved youth who were exasperated by the ECK's postponements.

⁵ In February 2008, estimates put the number of internally displaced persons between 200,000 and 250,000. It was not easy to count them because, strictly speaking, there was no IDP camp. The refugees were as varied as they were mobile as the IDPs moved around a lot.

⁶ Apart from getting a major part of its resources from tourism, whose season had already been ruined, Kenya is a regional supply hub (oil, food). Uganda, Rwanda and Burundi therefore experienced shortages. For initial figures, refer to R. Porhel, 'The economic consequences of the political crisis', in this volume.

⁷ The methods mentioned were vote-buying during campaigns, intimidation during the election period, higher number of voters than those registered, voting by dead voters, theft and smuggling of ballot boxes (the official seal was sometimes replaced by adhesive tape...), changing of ballot papers, missing signatures of poll agents, sending of photocopies instead of originals of result documents, and finally the rewriting of results during final vote tallying.

⁸ The European Union Elections Observation Mission, 'Preliminary statement: doubts about the credibility of the presidential results hamper Kenya's democratic progress', 1 January 2008; Commonwealth Secretariat, 'Kenya general election 27 December 2007: the report of the Commonwealth Observer Group', January 2008; Kenya Elections Domestic Observation Forum, 'Preliminary statement and verdict of the 2007 Kenya's general elections', 31 December 2007; East African Community Observer Mission, 'Report on the Kenya general elections, December 2007', January 2008.

News and rumours about the rigging sparked off events.⁹ More than the ethnic affiliation of the suspected frauds in the elections, it is the disgust over their political strategy that fuelled the riots. Although the chaos started off as a political conflict (which could be described as a “civil coup d’état”), it took the form of a social revolt in its initial days. Most of the rioters were jobless youth who believed Odinga was the only candidate who hearkened to their plight—and they were not all Luo, as stressed by Anne Cussac in the following chapter. The two epicentres of the demonstrations were Kisumu, in Nyanza Province, and the Kibera slums in Nairobi, both ODM strongholds. However, clashes between the rioters and security forces were soon worsened by fighting between ethnic gangs (Kikuyu against Luo; Kalenjin against Kikuyu...). In Nairobi, Kibera, Mathare, Kawangware, Korogocho, Dandora, Huruma and Kariobangi slums were engulfed by a wave of riots for several days. These attacks, which were initially ethnically motivated gave way to blind destruction. The protests became criminal, with gangs taking advantage of the crisis to loot and rape.

From January 2008, violence rocked the Rift Valley in Kericho and Eldoret then Naivasha and Nakuru. During inter-ethnic clashes, apart from the destruction of movable and fixed property as well as murders, there was a distinct desire displayed to spread terror by choosing soft targets (pregnant women, children and newly-born babies, the disabled). The use of machetes, knives or iron bars, recourse to killings and rape, were some of the cruel means of reminding the

⁹ The mobile phone was a key tool in the rumour propaganda (via SMS). Both the opposition and the government used it unsparingly weeks before, during and after the elections.

‘enemy’ community that anything was possible.¹⁰ The intervention by Mungiki militia, known for its extreme violence, undoubtedly made tempers flare. This could have encouraged a backlash of similar excesses by adversaries.¹¹

The violence thus manifested itself in several dynamics: police repression of ODM supporters and gangs of looters, with a prevailing shoot-to-kill order;¹² militia action on political orders (Mungiki as well as Kalenjin, Luo and to a lesser extent Kisii militia); operations of *ad hoc* vigilante groups carefully created to adhere to ethnic criteria; exactions by groups of thugs who sometimes passed for militia or vigilante groups; and settling of personal scores between groups or individuals taking advantage of the situation to grab or destroy rival business, or to take revenge on a tenant or landlord.¹³ Therefore, there

¹⁰ Early in January 2008, an arson attack on an Eldoret church in which scores of people perished was one of the most widely covered incidents by the media. Journalists published survivors’ testimonies which talked of mutilation, escapes through the window... However, many acts of extreme violence, of which there was clear evidence, were not covered by the media, especially those that took place in Nairobi slums. The first detailed reports became public in February. See: Kenya Human Rights Institute, ‘Civil Society Responses to the Kenyan Crisis’, Nairobi, February 2008. This report distinguishes spontaneous violence, militia activity, gender violence, reprisals and opportunistic violence; the report also revisits the threats issued by some groups, for example the Thagicu People’s Redemption Movement, whose two main targets were ‘traitors’ of the Kikuyu community and human rights activists. Together with these were the ‘anonymous’ threats warning members of some ethnic communities to leave their homes. During election campaigns and the weeks that followed them, vernacular radios (Kass FM in Kalenjin, Inooro, Kameme and Coro in Kikuyu) broadcast programmes that encouraged ethnic chauvinism.

¹¹ Mungiki, a Kikuyu militia formed in 1987, is today the most structured group in the country. It is said to have 600,000 members, who, however, pursue different aims. Many Mungiki adherents, who are also ‘available’, engage in politically commissioned operations and in various business ventures (controlling official or underworld markets). They go through a Kikuyu initiation ritual which gives their membership a religious basis. Refer to references cited by Anne Cussac.

¹² There was also a possibility of police behaviour being ethnically-oriented: there were testimonies of Kikuyu police officers passively watching as members of the Luo community were assaulted (and vice versa).

¹³ This mainly applied to the slums. Refer to M.-A. Goux, ‘Guerre des loyers dans les bidonvilles de Nairobi’, *Politique Africaine*, No 91, October 2003, pp. 68–82.

was real confusion, including in the western parts of the country, Odinga's bedrock of support, where old feuds resurfaced, for example in the Rift Valley and the Mt. Elgon area¹⁴. Violence was often between adolescents or young men for whom it meant defying traditional norms while questioning the political ability of the older generation in their respective communities. It is they who were responsible for erecting roadblocks and harassing motorists on an unprecedented scale.

Although the worst violence affected major urban centres, the rural areas were not spared either.¹⁵ Parallel to the displacement of people witnessed in Eldoret, from Burnt Forest to the Uganda border, in Narok there were increased incidents of cattle rustling. In an area where this usually happens after the dry season, starting mid-March, when pastoralist communities need to "restock", these incidents occurred much earlier. As early as January and February, there were attacks in Lokwamosing, Samburu (Eastern Province), Lamuria, Rumuruti (Central Province), Cherangany, Naivasha and Koibatek (Rift Valley), which led to scores of deaths and theft of hundreds of heads of cattle.¹⁶ Whereas a delinquency of opportunism can be seen in the cattle rustling, it further appears that they underwent a transformation at the end of February, developing into deeper land and regional rivalries and showing that the communities involved (Samburu, Pokot, Maasai, Kikuyu, among others) were pursuing medium-term strategies.

Political leaders traded accusations over the violence using strongly emotive terms like "genocide" and "ethnic cleansing"—undoubtedly to draw the attention of the international community which was still traumatized by its failure during the 1994 Rwandan genocide.

¹⁴ For more on these regional conflicts, refer to the papers by Claire Médard and Anne Cussac.

¹⁵ Refer to maps by drawn Bernard Calas (subsequent pages) to illustrate this.

¹⁶ See, for example, 'Four killed in clash,' *The Standard*, 26 February 2008.

CONFUSION, ETHNICITY, TRIBALISM, REGIONALISM

In many ways Kenya's democratization process has been spectacular and rapid. Even though multiparty politics did not lead to an immediate political transition, political expression has quickly gained ground. There has been tolerance and even encouragement in some cases for public expression without the danger of harassment by security forces. But this freedom is fragile as witnessed in the intimidation of human rights organization leaders during the month of January 2008.

The 2002 elections brought political transition along with Kibaki's victory.¹⁷ With the hopes that were raised, these elections masked a number of democratic shortcomings such as unfulfilled promises, political failures and corruption scandals, which characterized Kibaki's first term in office. Above all, the government proved to be incapable (or had little will) to directly face the main problems in the country. Among these were equitable land distribution and unemployment among the youth. Indeed, the violence in political and social relationships was a reminder of the bad memories of ethnicity, tribalism, land issues and *Majimbo*.¹⁸

Political debate in Kenya has been perpetually ethnicized since independence but as John Lonsdale points out, the chaos is not that easy to explain with reference to old "tribal" rivalries or cynical political calculations.¹⁹ A number of the current misunderstandings come from

¹⁷ For more about this period, refer to 'Le Kenya. Le contrat social à l'abandon' No 70 June 1998 and 'Le Kenya après Moi' No 90 June 2003, both published in *Politique Africaine*.

¹⁸ *Majimbo* originally stands for a federal system that enabled each region to have its own government. After being experimented at independence, it was abandoned but the idea gained currency during crises, like in the 1990s and the 2007 election campaigns during which candidate Odinga said it would be implemented if he was elected.

¹⁹ J. Lonsdale, 'Kenya: ethnicity, tribe and state', 17 January 2008, available on www.opendemocracy.net.

ambiguous relationships between British settlers and the Kikuyu, who were among the first victims and beneficiaries of colonization. In the 1950s, the Kikuyu rebellion movement, Mau Mau, and the numerous appropriations led to the Kikuyu being viewed as guardians of anti-colonial nationalism, relegating the emancipation efforts by other ethnic communities to the background.²⁰ Throughout Kenya's history there is a "moral ethnicity", which first developed among the small communities in the 19th century then took root among the larger communities. This phenomenon is a system of internal regulation within each community built upon the notions of honour, patronage, generation, gender, poverty, wealth, property.²¹ Thus, "*when the elites in Kenya go too far, their mistakes are largely interpreted as an excess in tribalism [...] politics of greed, which offend the imagined moral economics of ethnic patronage in a relationship founded on production.*"²² However, as soon as Jomo Kenyatta came to power at independence, political actors resorted to exacerbated parochialism, instrumentalising segments of administration (provincial, district, authority and police), misappropriating public resources and diverting them to those close to them and to fund their election campaigns, organized "clean-up" operations, and under Daniel arap Moi, they carried out ethnic killings as well as financial mismanagement.

These practices, together with the government's propensity to capitalise on ethnicity, gave form to the imagined communities which crystallized and developed protection reflexes during crises. Thus, during the worst chaos at the beginning of 2008, a number of

²⁰ Debates in Kenya and in Great Britain on the scale of the Mau Mau movement are far from over. Refer to, among others, the detailed biography in M.-E. Pommerolle, 'Une mémoire vive: débats historiques et judiciaires sur la violence coloniale au Kenya', *Politique Africaine*, June 2006, No 102, pp. 85–100.

²¹ Refer to J. Lonsdale, 'Ethnicité morale et tribalisme politique', *Politique Africaine*, No 61, March 1996, pp. 98–115, and 'Moral and Political Argument in Kenya', in Berman, D. Eyoh and W. Kymlicka (eds), *Ethnicity and Democracy in Africa*, Oxford, James Currey, Athens, Ohio University Press, 2004, pp. 73–95.

²² J. Lonsdale, 'Le cas kényan: un débat moral et politique', *Politique Africaine*, No 90 June 2003, p. 19.

Kenyans withdrew into their ethnic cocoons, which they considered more reassuring—forming ethnic defence groups and refusing to talk to “enemies”. What remains to be seen is how the internal tensions are negotiated within each ethnic community, particularly among the Kikuyu, Kalenjin and Luo. Another central aspect is that the anti-Kikuyu sentiments were greatly aggravated. The Kikuyu were accused of manipulating State apparatus, monopolizing the economy, controlling State firms and grabbing a lot of land. There were many fantasies about the Kikuyu community, which also mirrored its own fears of extermination if their representatives did not remain in power.

The January and February 2008 violence in the Rift Valley was largely a result of the old political strategies. During the colonial period, the Nandi and the Kipsigis were forcefully displaced to give way to White settlers. At independence, Kenyatta replaced the settlers with members of the Kikuyu community whom he resettled by the thousands. He appointed Moi, a Tugen, as Vice-President whose mission was to give positions to Nandi leaders on condition that they accepted an arrangement unfavourable to their community. Those opposed to the arrangement sometimes paid with their lives in political assassinations under the guise of accidents. When he ascended to power in 1978²³, Moi sought to establish a new ethno-territorial order, closely associating ethnic community and administrative regions in order to create easily identifiable land and electoral areas.²⁴ In 1992, as the first multiparty elections approached, the government organized

²³ From the mid-1970s, several reports have shed light on the use of State resources to favour the Central Province (Kikuyu). Parliamentarians demanded better land distribution and change in economic policy but they were repressed or even assassinated. Upon Kenyatta's death in 1978, his vice-president, Daniel arap Moi managed to manipulate the divisions among the Kikuyu elite to overcome the opposition to his take-over, which was actually provided for in the constitution. Kibaki, who was then minister of finance, supported him. Cf. J. Widner, *From “Harambee” to “Nyayo!”: The Rise of a Party State in Kenya*, Berkeley, University of California Press, 1992.

²⁴ Concerning this process and its consequences, refer to J. Klopp, ‘Can moral ethnicity trump political liberalism? The struggle for land and nation in Kenya’, *African Studies*, vol. 61, No. 2, 2002, pp. 269–294; C. Médard, ‘Les conflits ‘ethniques’ au Kenya: une question de votes ou de terres?’, *Afrique contemporaine*, N° 180.

violence aimed at displacing the Kikuyu. This was officially explained as restoring the land to its original owners but in reality, the government wanted to prevent Kikuyu voters from voting. Kikuyu resistance forced Moi to declare a state of emergency. A few years later, in 1996 and 1997, in order to avoid a repeat of this experience with mixed results, local leaders in northern Rift Valley helped many Kipsigis to settle on the land without displacing the Kikuyu who were still there by hiving off land from forests and government land. At the highest level of government, there was concern about re-drawing constituency boundaries to conform to the new settlements. These manipulations provoked fresh tension, hundreds of deaths and the displacement of tens of thousands others with the intervention of Kalenjin militia had already been causing chaos alongside the police. Then in 2003, the Kibaki government expelled thousands of Kalenjin farmers who had “illegally” settled in Molo District, the epicentre of conflicts for over ten years. Inter-ethnic clashes in the Rift Valley also led to complex and sometimes contradictory dynamics: poverty, the desire to legally own land, ethnic rivalries and the reaction to government insensitivity to the immense disorder that it had contributed in creating.

The land question is paramount in understanding Kenyan politics. Despite significant urbanization, over 70% of the population live in rural areas. Additionally, “*the agrarian economic policies and regional disparities significantly inform political rivalries, which inspire the fight for control of means of making land productive, a fundamental attribute for any kind of social upward mobility and an effective means of primitive accumulation in areas where land is most fertile.*”²⁵ The high population growth rate worsens the competition for land, particularly in the most attractive areas, with the highest rainfall (Central and Western Provinces).

The land issue has aggravated social, political and economic

²⁵ F. Grignon, ‘La démocratisation au risque du débat? Territoires de la critique et imaginaires politiques au Kenya (1990-1995)’, in D.-C. Martin (ed), *Nouveau langages du politique en Afrique orientale*, Paris, Karthala, Nairobi, IFRA, 1998, p. 32.

relations since the colonial period. In 2004, the Ndung'u report highlighted the inequalities; land grabbing, mismanagement and corruption in land allocation under the Kenyatta and Moi regimes, implicating former ministers, parliamentarians, judges, officers and other civil servants.²⁶ Land distribution is heavily politicised and the central government, like the provincial administration is perpetually changing its principles—legal mechanisms in relation to land are now exceptionally complex with numerous favours accorded.²⁷ The Ndung'u report, whose findings included falsified documents, excessive payments and the existence of fraudulent title deeds, emphasized the need for presidential intervention on the matter, especially concerning the degazetting of inalienable urban land. It was not surprising that most incidents of land manipulation occurred during the 1992, 1997 and 2002 electoral periods when land was used as political reward in a classical system of patronage. This also gave rise to the most classic cases of corruption—to recover funds, companies and administrations exchanged huge tracts of land without valuation. Similarly, protected areas were re-distributed with complete impunity.²⁸

Public attention logically focused on community inequalities, particularly on land restructuring from which the Kikuyu benefited under Kenyatta and from which other communities benefited, starting with the Kalenjin under Moi. Alliances can thus be observed in the shadow of ethnic rivalries, like the Forum for Restoration of Democracy (Ford) which was formed at the beginning of the 1990s to protect the

²⁶ P. Ndung'u, *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*, Nairobi, Government Printer, December 2004. Also refer to R. Southall, 'The Ndung'u Report. Land and graft in Kenya', *Review of African Political Economy*, vol. 32, No 103, 2005, pp. 142–151. The Commission, whose members were specialists drawn from relevant ministries, was appointed by Kibaki in June 2003.

²⁷ There are three types of land: government land (former crown lands), land under community jurisdiction (trust lands, belonging to various ethnic communities, but managed by the provincial administration) and private land.

²⁸ P. Ndung'u, Report of the Commission... *op.cit.*; P.M. Syagga, 'Land ownership and uses in Kenya: policy prescriptions from an inequality perspective', in Society for International Development (SID), *Readings on Inequality in Kenya. Sectoral Dynamics and Perspectives*, Nairobi, SID East Africa, 2006, pp. 289–344.

Kikuyu, Luo and Luhya from political scheming by Moi, who ensured that only those who swore allegiance to him remained in the Rift Valley. He accepted the introduction of multiparty politics but, on the other hand, did everything to demonstrate that the system could only lead to disorder. In this regard, the rekindling of the debate on *Majimbo*—the regional redistribution of power discussed by A. Cussac—could only fan the flames of the 2007 election campaigns.

DISINTEGRATION: FAILING POLITICAL STRATEGIES

After the 2002 elections, many betrayals and failures undermined the credibility of the Kibaki regime. The National Rainbow Coalition (NARC), which propelled him to power, criticised his predecessor Moi of ethnicizing the State and impoverishing Kenyans, by approving intra- and inter-ethnic violence and allowing insecurity to flourish. For the opposition, the best response to the crisis was to form an inter-ethnic structure. NARC agreed to the sharing of posts between the six principal ethnic leaders, Kibaki (Kikuyu), Odinga (Luo), Charity Ngilu (Kamba), George Saitoti (Maasai/Kikuyu), Kipruto arap Kirwa (Kalenjin), Kijana Wamalwa (Luhya) and Musyoka (Kamba). However, very soon after Kibaki's victory, it became evident that the Kikuyu networks sought to consolidate the power that had finally been recaptured. The inter-ethnic power-sharing agreement was ignored and constitutional reform which was to lead to the creation of the prime minister's post was repeatedly postponed. It was then left to a parliamentary committee whose recommendations were not even heeded.²⁹ NARC then fell apart, giving way to new parties while others re-emerged. Thus, after a brief period of calm, the political game resumed with a shared ideal: the protection of an ethnic community's

²⁹ For further readings on constitutional reform and the referendum against the government, refer to H. Charton and C. Médard (ed), *Annuaire de l'Afrique orientale 2005*, Paris, L'Harmattan, 2007, p. 59-128.

interests against its “enemies” by returning to its roots and through common destinies and social responsibilities.

Created in 2005 during the constitutional referendum campaigns, the ODM brought together politicians from various ethnic communities, who were disillusioned with NARC. Musyoka created his own structure while Odinga, a Luo, was able to gather around him Kalenjin, Luhya, Kamba, Mbeere and Arab leaders. Kibaki’s secret hope to see the creation of as many parties as the disillusioned politicians within NARC was thus dashed.

Beyond the reasoning of networks, Kenya as a State demonstrated an incapacity to define alternative forms of conflict management and resolution and was helpless in responding to crises. It showed its ineffectiveness in projecting a sense of national belonging strong enough to overcome ethnic divisions which led to an identity crisis and some sort of political schizophrenia. While the elite called for national identity in their rhetoric, they in fact used their positions to maintain their ethnic base. A political participation crisis is also emerging; the proliferation of political parties does not help in enhancing transparency and election rigging threatens to encourage voter apathy. Above all, beyond the events mentioned, the institutional crisis takes on other worrying trends. First, due to the opacity of the political system, the State’s social and economic diffusion is weak and contributes to the freezing up of communities within their ethnic space. Furthermore, the State’s ‘official’ capacity to control instruments of violence has weakened. One may ask to what extent some sectors of the Kenyan state have fallen under the yoke of militias, which have become increasingly more difficult to contain by political leaders.

Electoral manipulation and the weakness (or bad faith) of the State in channelling the violence has indeed encouraged militias. Groups like Mungiki and Chinkororo (Kisii), which had never been dismantled, and other more transient ones either reformed or rehabilitated. Examples are Kamjesh, Talibans, Baghdad Boys (all Luo), as well as Kalenjin militias supported by Kalenjin business people and political

figures in the Rift Valley, the People's Liberation Army and the Group of 41 (the 41 other ethnic communities apart from the Kikuyu),³⁰ have for a long time edged out youth wings that had been activated by political parties during election campaigns.³¹ Currently, however, some groups have grown larger than their creators.³² The Mungiki example is the most outstanding. Its members were active at the beginning of the year in Central Province, the Rift Valley and Nairobi, with a clear slogan: "*the time for revenge is now*."³³ They were also responsible for the chaos in Naivasha, Nakuru, Thika and Ruiru at the end of January. However, it appears that this group, secretly supported by leading Kikuyu political figures, is divided. Those within Mungiki who were paid by politicians close to the president to cause chaos are considered renegade by the others who are more concerned with central issues such as the land issue. In fact, in the cat and mouse game with the government, which sometimes uses the group and at others, represses it, there is no assurance that the militia group is the loser. Mungiki recruited massively during the events and thousands of members demonstrated within Nairobi City Centre to demand the release of one of its key leaders. This is a clear indication that the group can make itself either visible or invisible.³⁴

There is a high risk that several of these militia groups could heavily arm themselves. Thus, while the Group of 41 may still be using machetes and arrows, the Mungiki have firearms. The criminalization

³⁰ Irin, 'Kenya: armed and dangerous', 22 February 2008. The last group, in particular, is said to be well organized, no doubt by former soldiers. Other militias can be mentioned like Mulungunipa Forest Group (South Coast, towards Kwale), Kosovo Boys (Luhya and Luo militia based in Kibera) and even the Sabaot Land Defence Force (SLDF), which is mentioned later in this volume by Claire Médard.

³¹ H. Maupet, 'Vie et mort d'un groupe de pression électorale. L'exemple de Youth for KANU '92' *L'Afrique orientale* 2000, Paris, L'Harmattan, Pau, Crepao, Nairobi, IFRA, 2000, pp. 395–421.

³² There are still few comparative studies on these militias. D. Anderson, 'Vigilantes, violence and the politics of public order in Kenya', *African Affairs*, No 101, 2002, pp. 531–555.

³³ Cited by International Crisis Group (ICG), *Kenya in Crisis*, Africa Report No 137, 21 February 2008, p. 14.

³⁴ 'Mungiki demo takes city by surprise', *Daily Nation*, 6 March 2008.

of protests, with 'rioters' infiltrating the protesters, together with the militarization of society, is expanding to fill in the vacuum left by the State. Those who suffer the most are the most disadvantaged fringes of the population, from the urban proletariat to the rural dispossessed. It is among these that the 'recruitment sergeants' of the militia (*jeshi*, 'armies' in Kiswahili) work, finding consenting prey among the excluded youth (from land resources, education system). This is because even though the free education programmes implemented by the Kibaki government has given of thousands of youth access to education, poverty has not reduced. One of the crucial issues remains employment of qualified youth, professional relegation, or those that are both unemployed and uneducated.

UNCERTAINTIES: SUPERFICIAL PACIFICATION?

Negotiations to resolve the crisis began early and could have been concluded by 10 January but the signing of the memorandum of understanding entitled 'Principles of Agreement' by Kibaki and Odinga in the presence of John Kufuor, the African Union mediator, Adam Wood, the British High Commissioner, together with American and French ambassadors (M. Ranneberger and E. Barbier), did not take place: Kibaki's PNU hardliners pressured him to abscond at the eleventh hour.³⁵ The debates also became more serious and there was no end to the crisis as chaos spread across the country. Kofi Annan's arrival in Kenya on 22 January and the beginning of fresh negotiations on 28 January led to some progress. Each camp appointed a small committee bringing together hardliners and moderates.³⁶ On 23 February, the creation of the post of Prime Minister for leader of the majority party in parliament and allocation of about 10 cabinet posts to ODM was adopted and after several days of pussy-footing, an accord was signed on 28 February.

³⁵ ICG, *Kenya in Crisis*, *op.cit.*, pp. 21–22.

³⁶ Ministers Karua and Ongeru and MP Kilonzo to represent the government and MPs Mudavadi, Ruto, Kosgei and Orendo to represent ODM.

Until then, Kibaki and his supporters, who had time on their side, increasingly engaged in diversion tactics, sending out signals of an enhanced authoritarianism. The appointment of a partial government on 8 January, the same day that John Kufuor arrived, was the first indication of this trend. It was confirmed by the inclusion of controversial figures like George Saitoti, John Michuki and Martha Karua. The appointment of Musyoka—who was third in the presidential race—to the post of Vice-President clearly demonstrated Kibaki's desire to seal up government positions, leaving only measly ministerial positions for any possible ODM appointees.

Under such conditions, international mediation was difficult. Kibaki, however, pointed out that the mediation was offensive or at the very least, useless since in his opinion, the situation had been contained and no illegality had been noted. The impression of indecision and tension which characterized the crisis resolution process was strengthened by mixed signals from some partners, especially Americans,³⁷ disorder and repeated postponement in the arrival dates of mediators and intermediaries,³⁸ government attitude,³⁹ and even the

³⁷ The United States had indicated the day after the announcement of results that the elections had been free and fair. Two days later, they reviewed their position and Jendayi Frazer, Assistant Secretary of State for African Affairs, came to Nairobi as mediator. From then on, US intervention was either firm or moderate, and Condoleezza Rice's visit to Kenya on 17 February was a demonstration of the will to pacify the debates. It is also worth noting that at the same time (16–23 February), George W. Bush was in Tanzania to discuss the setting up of Africom, a US military base along the eastern coast of Africa.

³⁸ Disorder because several former African presidents (Benjamin Mkapa, Ketumile Masire, Joaquim Chissano), as well as Graca Machel, wife of Nelson Mandela, arrived "uninvited". Only Machel and Mkapa were involved in the negotiations; Ugandan President Museveni, who had invited himself at a time when rumours were rife about the presence of his army in western Kenya, was welcomed more warmly by Kibaki (military support to him was an option for Uganda, which would suffer if Kenya collapsed). Postponements were due to delays in the arrival of John Kufuor and Kofi Annan.

³⁹ When Odinga, on 18 January, called for a stop to demonstrations and change of strategy (boycott of pro-government companies), the government announced it had set up a mediation committee whose members were Kibaki's close allies or very 'strategic' (head of delegation: Musyoka; members: Saitoti, Karua, Uhuru Kenyatta, Attorney-General Amos Wako...). This committee never sat.

assassination of ODM parliamentarians.⁴⁰ The power relations were also complex: each camp had hardliners and it was unclear how far they were prepared to go and who were in conflict not only with their direct adversaries but also sometimes with their own more moderate allies.⁴¹ Away from the political circles, there was concern within the business community, which urged political leaders to speedily resolve the crisis. They even took part in the initial negotiations. The Kibaki government's economic objectives for 2007 had been extremely ambitious: 10% growth in the short-term and attaining the status of middle-income countries by 2030. However, the events of early 2008 undermined the economy and cast doubt on speedy recovery, especially because several donors would be obliged to reconsider their assistance.⁴²

Despite the duration of the crisis, there were some encouraging signs. The parliamentary elections culminated in a convincing victory by ODM, with some unknown candidates flooring old regulars in government. Many ministers lost their seats and almost all of Kibaki's generals were kicked out of government through the ballot. During parliament's opening session on 15 January, ODM candidate, Kenneth Marende, was elected with 105 votes in the third round of voting (against 101 for the PNU candidate), amidst fears that ODM parliamentarians would be approached (meaning bribed or manipulated) by PNU emissaries to join them and ruin opposition parliamentary hopes. Finally, the civil society was very active in public debate and adopted positions that were both uncompromising (demanding Kibaki's

⁴⁰ Mellitus Mugabe Were, MP for Embakasi (Nairobi) was shot dead on the night of 28 January; David Kimutai Too, MP for Ainamoi (near Eldoret), was gunned down by a policeman two days later.

⁴¹ People like Joseph Kamotho, Karua, Amos Kimunya, Michuki and Njenga Karume of PNU and Balala and Ruto of ODM stopped at nothing in their extremist game. In the ICG report cited above, two Kikuyus—Joe Wanjui and Nathaniel Kang'ethe—who controlled access to Kibaki, were also mentioned.

⁴² In 2007, the Kenya government together with 17 principal donors and civil society representatives adopted an economic assistance strategy, the Kenya Joint Assistance Strategy (KJAS), which set out three levels of funding (high, medium and low) depending on governance. The low level of funding would lead to a reduction of budgetary and sectoral assistance.

resignation)⁴³ and moderate (expressing desire to see the course of justice replace street protests).⁴⁴ This was an expression of the civil society's competitive function as an interested party.⁴⁵ Nevertheless, even though they were well established and organized, they still seemed incapable of weakening the government—in this regard, the situation has barely changed over the past ten years.⁴⁶

Kenya was in the eye of the storm.⁴⁷ Although normal life in Nairobi had resumed and the agreement signed on 28 February 2008 raised hopes of political appeasement, the situation remained unstable. With the immediate problems affecting the internally displaced people, continued clashes across the country, the difficulty in defining the necessary constitutional amendments for power-sharing, the challenge of peace was colossal.

⁴³ A petition signed at the beginning of 2008 by about 30 NGOs (including the Law Society of Kenya and the Institute of Education for Democracy), which was perhaps too fiery, was not covered by the media.

⁴⁴ P. Kagwanja, 'Breaking Kenya's impasse. Chaos or courts?', *African Policy Institute*, Working paper, January 2008.

⁴⁵ Refer to Kenya Human Rights Institute, *Civil Society Responses...*, *op.cit.*, which mentions activities of various civil society organizations (Amani Mashinani Initiative, Amani Focus, Africog) aimed at finding a solution to the crisis.

⁴⁶ H. Maupéu and J. Lafargue, 'La société civile kényane: entre résilience et résistance', *Politique Africaine*, No. 70, June 1998, pp. 61–73; D. Connan, 'La 'société civile' des droits de l'homme et les élections kényanes de 2007: quête de légitimation politique et impuissance sociale', *Les Cahiers de l'Afrique de l'Est* (Nairobi), No. 37, 2008.

⁴⁷ On 25 January 2008, the day after the Kibaki–Odinga handshake witnessed by Kofi Annan, clashes continued in Kibera and Mathare. During the whole of February, violence was the order of the day in some slum areas while the western parts of the country lived in uncertainty, with gangs of youths blocking the road to Narok, Naivasha, Nakuru, Eldoret and Kericho.

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PART I: THE ELECTORAL CAMPAIGN

“KIBAKI TENA?”

The challenges of a campaign

*Anne Cussac**

The 2007 electoral campaign, which took place in a confused partisan situation, was characterised by serious debate and true mobilisation which often took a violent turn. The campaign was very lively, pitting two men of diametrically opposed nature and vision against each other. At the same time, it raised a number of challenges that could have contributed to an exacerbation of violence after the announcement of the disputed presidential results.

At the end of the campaign, the voting process on 27th December 2007 was peaceful as compared to the post-election period. Before the elections, the competition was stiff between the two main political groupings—Mwai Kibaki’s Party of National Unity (PNU) and Raila Odinga’s Orange Democratic Movement (ODM). Additionally, the 2007 election was a test for Kibaki, who despite considerable socio-economic success—economic growth (6% in 2006), and free primary education—found his position weakened by the haphazard management of his cabinet and his failure to keep several of his campaign promises. The numerous cabinet reshuffles and the entry of opposition members into government considerably stirred up controversy.¹ Mainly, however, whereas Kibaki was elected on the grounds of his promise to fight corruption, several of his ministers were interrogated on these

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¹ Both in 2004 and 2005, members of Ford-People and KANU joined the government, despite being in the Opposition.

matters.² Finally, although the promise of a new constitution was one of Kibaki's main campaign arguments, the government was further weakened by the rejection of its proposal during the referendum on 21 November 2005.³ Additionally, the voting process not only pitted two men against each other, but also two visions for the future of the country. M. Kibaki promised the continuation of his policies under the slogan *Kibaki Tena*⁴ while R. Odinga claimed that he would lead the country to a "third liberation", to heal it of corruption and tribalism. The context in which the campaign was held will be investigated in this paper in order to better understand why electoral fraud provoked such a violent reaction.

THE COMPLEXITY OF POLITICAL PARTY STAKES

The three main groups in competition in 2007 emerged after the 2005 referendum, bearing witness to the rather opportunistic nature of partisan grouping. While these appeared as personal and ethno-regional enterprises, they coalesced in the search for access to national power and charged themselves not only ethnically but also politically according to the regions. In a parallel process, the only group with a national anchorage, Kenya African National Union (KANU)—former single party—seemed weakened throughout the campaign period.

² David Mwiraria, Kiraitu Murungi and Chris Murungari, as well as Kibaki's personal assistant Alfred Getonga and the vice-president Moody Awori were cited in the Anglo-Leasing financial scandal. George Saitoti, the architect of free primary education was interrogated in the Goldenberg affair.

³ The document was rejected by 57% votes. For more on its origins and the revision process, see W. Mutunga, *Constitution-Making from the Middle. Civil Society and Transition Politics in Kenya, 1992–1997*, Sareat, 1999; the chapter in H. Charton and C. Medard (dir.), *Annuaire de l'Afrique orientale 2005*, Paris, L'Harmattan, 2007, p. 59–128.

⁴ *Kibaki Tena*, meaning 'Kibaki once more', was the campaign slogan of the incumbent president.

Party confusion

For the 2002 elections, Mwai Kibaki drew from an anti-KANU front, the National Rainbow Coalition (NARC), which united the National Alliance of Kenya (NAK), which in itself was a coalition of 14 parties comprising the Democratic Party (DP), at that time headed by Mwai Kibaki, and Raila Odinga's Rainbow Alliance (then Liberal Democratic Party, LDP). Very soon after its victory in 2002, NARC split up. Frustrated by Kibaki's lack of respect for past agreements,⁵ the majority of LDP members of parliament close to Odinga joined KANU, and became the main opposition party. This was the birth of the 'Orange Movement', created to fight against the new constitution proposed by Kibaki. The rejection of the Constitution project by citizens during the November 2005 referendum eventually wrecked NARC with Kibaki having dismissed the ministers who called for a rejection of the document. The President no longer relied on a limited coalition and he lost a large part of his popular support.⁶ NARC was also affected by the departure of several of its MPs to other groups created much later, such as NARC-K and ODM. In total, about three-quarters out of 222 MPs in the Ninth Parliament changed their political party between 2002 and the end of 2006.⁷ Moreover, until Kibaki announced in October 2007 that he would be standing under the ticket of a new coalition, the Party of National Unity (PNU), three parties (DP, NARC, and a scission of NARC, NARC-Kenya) disagreed about him being their

⁵ Contrary to what was expected, the positions were unequally distributed; the first government appointed by M. Kibaki had 17 NAK ministers and only 8 from LDP.

⁶ L. Maina, F. Waswa and S. Waiyego, 'Pitfalls in constitution-making in Kenya: experiences from Bomas and the 2005 national referendum', in H. Charton and C. Médard (dir.), *Annuaire de l'Afrique orientale 2005*, *op.cit.*, p. 123.

⁷ 'New bull to tame political parties', *Sunday Nation*, 3 December 2006, p. 7. Odinga had changed his political affiliation seven times, while Kibaki had done so five times. See 'Masters of defection: Raila and Kibaki lead', *The Standard*, 13 September 2006, p. 1-2.

leader. Beyond these institutional aspects,⁸ this strong mobility led to a questioning of the significance and function of political formations in a country which, since independence, has lived under a *de facto* and *de jure* single party between 1982 and 1992.

African political parties have for a long time been a rather neglected object of study. The opening up to multipartyism in the 1990s, which gave rise to a multitude of fleeting groupings, barely improved the situation.⁹ Kenya was no exception and in November 2007, when the ECK made the final list of electoral candidates public, 134 political parties had been registered.¹⁰ Nevertheless, just a few of them dominated the political scene and these changed names according to their whims for the elections but were nevertheless composed of the same members, who often had been engaged in politics for a long time. Added to this, the partisan formations did not translate to ideological differences and were mainly electoral machines of individuals who used them to their own interests.¹¹

Moreover, because ethno-regional origins and patronage are central

⁸ There is no specific law on the formation, management and funding of political parties. The proposed law on this issue in 2007 was not signed by Kibaki before the dissolution of Parliament.

⁹ Political parties in Africa today seem to attract more interest. See G. Erdmann, 'Party research: Western European bias and the "African labyrinth"', *Democratization*, vol. 11, no 3, 2004, p. 63-87; M. Gazibo, 'Pour une réhabilitation de l'analyse des partis en Afrique', *Politique africaine*, no 104, December 2006, p. 8; G. Erdmann and M. Basedau, *Problems of categorizing and explaining party systems in Africa*, Giga Working Papers, no 40, 2007; M. Basedau, G. Erdmann and A. Mehler, *Votes, Money and Violence. Political parties and elections in sub-Saharan Africa*, Uppsala, Nordiska Afrika Institutet, Scottsville, KwaZulu-Natal Press.

¹⁰ www.eck.or.ke/downloads/politicalparties.pdf. More than 300 political formations were recognised by the Attorney General, but only half of them were registered with the ECK.

¹¹ P. Wanyande, 'The politics of alliance building in Kenya: the search for opposition unity', in W.O. Oyugi, P. Wanyande and C.O. Mbai (eds.), *The Politics of Transition in Kenya. From KANU to NARC*, Nairobi, Heinrich Boll Foundation, 2003, p. 148. The Kenya Democratic Alliance (Kenda) is significant in this case. This grouping, created by Kamlesh Pattni, a businessman implicated in the Goldenberg scandal, allowed him to change his image.

aspects in the political life of Kenyans, political parties are very often anchored in the region of their main leader and only rarely do they have a truly national nature apart from creating coalitions of politicians of different ethnicities, which probably explains their fragility.¹² For example, the Democratic Party (DP), created in December 1991 by M. Kibaki, dominates the Central Province, a Kikuyu-populated area. Ford-Kenya is associated with Western Kenya and Musikari Kombo. In the same vein, the Orange Democratic Movement-Kenya (ODM-K), of the presidential candidate Kalonzo Musyoka who belongs to the Kamba ethnic group, enjoyed an audience limited to Ukambani.

Taking into account the large ethnic dispersion in the country,¹³ in order to endear themselves to the electorate, politicians have no choice but to mobilise voters outside of their ethnic block. Presidential aspirants were therefore heavily involved in mobilising their allies across the country quite early on, in an attempt to play the multi-ethnic card. For example, M. Kibaki relied on Daniel Moi and Kipruto Kirwa (both Kalenjin) in the Rift Valley, on Chirau Ali Makwere (Mijikenda) in the Coast, on Musikari Kombo (Luhya) in the West, and on Simeon Nyachae (Gusii) in the Kisii region. R. Odinga, on his part, benefited from Musalia Mudavadi's (Luhya) popularity in the West, from Najib Balala (Arab) at the Coast, from Joseph Nyaga (Mbeere) in central Eastern, and from Fred Gumo (Luhya) and Reuben Ndolo (Luo) in Nairobi.

Despite all this, the institutional weakness of the political parties manifested itself during the primaries for the designation of candidates

¹² However, KANU was an exception and enjoyed a national reach.

¹³ Kenya has 42 ethnic groups which are basically concentrated in certain regions: Kikuyu in Central Province, Luo in Nyanza Province and Luhya in Western Province.

to parliamentary and local seats.¹⁴ These nominations unfolded in a chaotic and often violent manner, and several candidates who lost in the large parties kept their candidacy by joining less well-known political parties.¹⁵

KANU's unlikely recovery

KANU, the oldest party in the country, dictatorial under Kenyatta and Moi, never emerged from its 2002 retreat.¹⁶ Officially having been at the head of the opposition, the political party saw about half of its leadership rally behind ODM, with the exception of Uhuru, the son of Jomo Kenyatta. In 2007, its weakened state was confirmed as, for the first time in its history, the party had no candidate in the presidential elections and was represented in a few constituencies for parliamentary elections.¹⁷ KANU's fragility was distinct in the parliamentary elections of 1997, where it won only four seats.¹⁸ In the run-up to the 2002 polls, while Moi unilaterally chose Uhuru Kenyatta as his successor, he encountered criticisms and defections. The prevailing difficulties in KANU certainly owed much to Kenyatta, an inexperienced and highly criticised politician within the party. In January 2005, after his elevation

¹⁴ PNU, ODM and ODM-K had chosen to hold the primaries for the choice of their candidates in the local and parliamentary elections. These unfolded in a rather disorganised manner because in theory, only party members were eligible to vote, it turned out that an identity card and voter's card were sufficient for one to participate. This resulted in a situation where, for example, a PNU member could take part in ODM primaries and vice versa.

¹⁵ Kenda is also of interest in this instance, because as it did not have presidential candidates, it registered a considerable number of parliamentary aspirants, having benefited from an increase of several hopefuls left out during the primaries of the main political parties.

¹⁶ D. Anderson, 'Le déclin et la chute de la KANU. La recombinaison des partis politiques dans la succession de Moi (Kenya)', *Politique africaine*, n° 90, June 2003, p. 37-55.

¹⁷ KANU rallied around PNU to support Kibaki's candidacy to the presidency, but kept its own candidates for the local and parliamentary elections.

¹⁸ K. Kanyinga, 'Limitations of political liberalisation: parties and electoral politics in Kenya, 1992-2002', in W.O. Oyugi, P. Wanyande, C.O. Mbai (eds.), *The Politics of Transition...*, *op.cit.*, p. 96-127.

to party chairman, Nicholas Biwott, a historic figure in KANU, created a dissident group for some time before returning to the main party.

And so it was that Uhuru Kenyatta found himself at the head of a divided KANU, deserted by several of its former members. A faction coalesced around Njenga Karume and thus identified with the Kibaki government, with other MPs from Kiambu. On the other hand, the majority of KANU MPs from the Rift Valley associated themselves with ODM at the end of 2005, and were led by W. Ruto. The latter wanted to enter into a coalition in 2007 while Moi believed that KANU could manage on their own in the parliamentary elections. The battle between the two men was not only about the leadership of the formation but also about the leadership of the Rift Valley Kalenjin community. Rift Valley is the region with the highest number of voters, amounting to about 3.5 million. Throughout his presidency, Moi largely controlled the Kalenjin vote, and in 2007, he attempted to win over his voters to support Kibaki.¹⁹ In 2002, many Kalenjin followed him by voting for Kenyatta, then in 2005, against the constitutional reforms project. However, Moi's popularity crumbled and is today limited to the political and economic elite from the Rift Valley, as well as those of his Tugen community. For his part, Ruto had the support of the youth and the poor, as well as the Kipsigis and Nandi sub-groups. On the other hand, Kibaki had very little popularity among the Kalenjin who had not forgiven him for sacking many of their community members from the positions of authority that they had acquired under Moi's rule. The alliance between Moi and Kibaki in 2007 was ultimately ambiguous, as Kenyatta, Kibaki's adversary in 2002, campaigned for him in 2007!

¹⁹ Moi supported Kibaki as KANU did not have a presidential candidate. But he intended his party to present its own candidates in the parliamentaries and not under the banner of PNU.

Pre-electoral violence changes

Pre-electoral violence, a recurring phenomenon after the beginning of multipartyism, became a tool used by the government to stamp its dominance in the Kenyan society.²⁰ Termed ethnic confrontations, land battles, livestock theft, border clashes or banditry, these acts, occurring in a local framework of deep conflict, also had a hidden agenda of terrorising the populations suspected of supporting the opposition, in order to prevent them from voting. Despite this, the 2002 elections demonstrated the failure of the State-sponsored violence,²¹ as it could not prevent NARC's victory over KANU. Several people who had been responsible for the violence in 1992 and 1997 had since joined the opposition, thus weakening KANU's capacity to mobilise militia.²² Additionally, in 2002 the two main candidates were Kikuyu. Choosing on ethnic grounds was therefore impossible both for the Kikuyu as for the other Kenyans.²³

In 2007, the situation was quite different as the most serious presidential candidates were from different ethnic communities, considered as politically antagonistic. There were therefore fears that the identity themes would be manipulated for political ends. Nevertheless, it is difficult to affirm that the pre-electoral violence was a preview of the events after the announcement of the results, even if the reaction of the losers could have been worrying, due to the stiffness of the competition. In reality, the pre-electoral confrontations resulted in a resurfacing of previous problems. This paper will discuss the cases

²⁰ M. Kagwanja, *Killing the Vote. State-sponsored Violence and Flawed Elections in Kenya*, Nairobi, Kenya Human Rights Commission, 1998.

²¹ P. Mutahi, 'Political violence in the elections', in H. Maupeu, M. Katumanga, W. Mitullah (eds.), *The Moi Succession. Elections 2002*, Nairobi, Transafrica Press, 2005, p. 69-95.

²² S. Brown, 'Theorising Kenya's protracted transition to democracy', *Journal of Contemporary African Studies*, vol. 22, n° 3, 2004, p. 332-3.

²³ P.O. Asingo, 'The political economy of transition in Kenya', in W.O. Oyugi, P. Wanyande, C.O. Mbai (eds.), *The Politics of Transition...*, op.cit, p. 39.

of Molo, a rural area, and of the Mungiki movement in the urban settings.

Molo district was the epicentre of violence in 1992. During the 2007 campaigns, the violence mainly affected Kuresoi district, where hundreds of houses were burnt down and several dozens of people killed between October and December.²⁴ The region had experienced an old land problem, linked to the establishment of 'squatters' from the Central province, in the colonial era.²⁵ In a situation where thousands of Kalenjin were chased away from Mau Forest in Molo District by the Kibaki government where they had illegally settled, the Kalenjin believed that the land in the area was theirs by right. Kenya is an agrarian society where access to land is a fundamental issue. It is used by some members of the elite for political ends, by resorting to fear tactics. For example, among the Kikuyu, fear rested on the idea that if they lost the presidency, they would also lose their land. In Molo, the Kikuyu are considered by the Kalenjin as illegitimate holders of the land and in this context, the land battle easily transformed into a macro-political conflict. Kalenjin leaders also played on this resentment inciting the rural poor within their community to expel their Kikuyu neighbours, promising to give them the abandoned lands. Described as a response to livestock theft, the violence in fact aimed at removing not only the Kikuyu but also the Kisii, considered as favouring President Kibaki—a Kikuyu—and PNU, to prevent them from taking part in the election. The authorities were then blamed for their passivity in view of the serious problems experienced in both Molo and Mount Elgon-, whereas they concentrated on the fight against Mungiki in the capital city. In these regions, far-flung from the main centres of

²⁴ 'Why decades-old conflict is unlikely to end soon', *Daily Nation*, 5 December 2007, p. 32.

²⁵ Under colonisation, the Kikuyu, chased away from the Central Province by the British colonialists, settled in the Rift Valley and at independence, taking advantage of their political and economic dominance, settled in large numbers in the region.

power, the violence mainly concerned local actors and did not threaten the government organs, as opposed to the troubles that affected the capital and which were violently repressed.

In March 2002, after the confrontations that pitted two militia groups (the Kikuyu Mungiki movement and the Luo Taliban) in Nairobi, all vigilant groups were banned by the Kibaki administration.²⁶ Despite this ban, Mungiki members supported Uhuru Kenyatta's candidacy in December 2002. After his failure, the sect members—mainly comprising unemployed youth—felt abandoned by the Kikuyu elite. Reconverted into a militia controlling residential areas that had been neglected by the government, the sect specialised in clandestine economic activities and settling of scores,²⁷ progressively evading control by politicians. As the group was well established in Nairobi and it had spread into the society and the State, Mungiki was a challenge for the authorities. Therefore, from June 2006, the Kibaki regime launched an attack against the sect, resulting in confrontations between the Mungiki members and the police in the Mathare slums and in some rural areas of Central Province. Additionally, after the arrest of its former leader, Maina Njenga, in February 2007, followed by his five-year jail term in May, the group increased its extremely violent activities, which the

²⁶ Several private militia were created in the 1990s in order to provide security in certain areas where the government had absconded its role. These gangs made the slum-dwellers pay for their security, for water and electricity. Mungiki stands out in this matter. Created as a socio-religious group to revive Kikuyu traditions, the movement progressively transformed into a violent militia. Mungiki is concentrated in several slums of Nairobi and in some parts of the Central and Rift Valley provinces. It controls the *matatu* industry in areas of low populations. See D. Anderson, 'Vigilants, violence and the politics of public order in Kenya', *African Affairs*, vol. 101, n° 405, 2002, p. 531-555; H. Maupéu, 'Mungiki et les élections. Les mutations politiques d'un prophétisme kikuyu (Kenya)', *Politique africaine*, n° 87, October 2002, p. 117-137; P. Kagwanja, 'Facing Mount Kenya or facing Mecca? The Mungiki, ethnic violence and the politics of the Moi succession in Kenya, 1987-2002', *African Affairs*, vol. 102, n° 406, 2003, p. 25-49.

²⁷ Mungiki is a sect that follows several codes and rituals. After having taken the oath, if a member of the group leaves, he is considered as a traitor. Several members of the sect who tried to leave it were assassinated.

police responded to brutally.²⁸ However in 2005, Maina Njenga had supported M. Kibaki in calling for a “Yes” vote in the constitutional referendum and in 2007, Mungiki had again mobilised in support of Kibaki under the umbrella of the Kenya Youth Alliance. Nevertheless, because of its increasingly violent acts, Mungiki became unpopular among the Kikuyu middle class and divides the politicians of this community. The group is still said to have the support of influential politicians and some Kikuyu Ministers such as John Michuki (Internal Security), Maina Kamanda (Sports) and Njenga Karume (Defence) are suspected to have links with the sect. But for the Kikuyu elite, which needed to control its bases, it was also a matter of maintaining their control on the sect, even if it implied a “sacrifice” of some of its members. In this battle, largely illegally carried out, hundreds of supposed Mungiki adherents were killed mercilessly. According to the Kenya National Commission of Human Rights (KNCHR), more than 500 young men, mainly Kikuyu, were killed by the police between June and October 2007. Their bodies were placed in several mortuaries across the country or abandoned in the fields.²⁹ The repression against the sect was on the headlines throughout this period even if, apart from these violent acts, real debates also marked the campaign.

A CAMPAIGN OF EXPLOSIVE DEBATE

The campaign was structured by several highly sensitive themes and the promises made elicited huge expectations, particularly among the underprivileged groups in the country, the poor and the youth. While the *majimbo*³⁰ issue solidified the competition between the two main parties, it also pit two men, of opposing views and personalities, against each other.

²⁸ Maina Njenga had intended to present Mungiki candidates in the elections. This was a threat to M. Kibaki who needed to control his Kikuyu base.

²⁹ See www.knchr.org/dmdocuments/Execution_Disappearance.pdf.

³⁰ *Jimbo* (*majimbo* pl.) is a Kiswahili word meaning region.

Revisiting the majimbo controversy

Promising 'growth' and 'poverty reduction', the presidential candidates disagreed on the issue of regionalism, better known as *majimbo*. This issue was at the core of the constitutional debate in the 1960s and at independence, Kenya adopted a federal system whereby each province had its own government. This experiment failed due to the incapability of some regions to govern themselves and the fierce opposition by Jomo Kenyatta, who became the Prime Minister in 1963.³¹ Thus, under the KANU government, regionalism was abandoned for centralisation. In the 1990s, the term re-emerged with one specific meaning, linked with ethnic violence in the Rift Valley, Nyanza, and the Coastal region. As the Kenyatta regime favoured the Kikuyu and associated groups—Embu and Meru—a large proportion of the country's wealth belonged to this new elite, grouped within the Gikuyu Embu Meru Association (Gema). Hence, under Moi's rule and "*to protect the integrity of the small tribes that were at the risk of being choked by the larger ones, such as the Kikuyu*"³² some KANU strong men, for example N. Biwott, William ole Ntimama, and Kipkalya Kones referred to *majimbo* and formed a coalition named KAMATUSA (Kalenjin, MAasai, TUrkana, SAmburu) aimed at uniting these different communities. In an attempt to strengthen their power in a situation of growing demand for multipartyism, they defended the concept to promote a federal system based on ethnicity, involving the expulsion of "non-indigenous" groups, particularly the Kikuyu, but also the Luo and Luhya, to their land of origin.³³

³¹ In 1964, Kenyatta amended the Constitution to set up a highly centralised republic, of which he became president. See D.M. Anderson, 'Yours in the struggle for Majimbo'. Nationalism and the party politics of decolonization in Kenya, 1995-1964', *Journal of Contemporary History*, vol.. 40, n° 3, 2005, p. 547-564.

³² A. Morton, *Moi: The making of an African Statesman*, London, M. O'Mara Books, 1998, p. 108.

³³ Asserting that the Rift Valley was Maasai and Kalenjin territory, they encouraged their supporters to expel members of other ethnic groups, suspected of voting for the opposition. The violence cost 1500 people their lives and displaced at least 300000 others. See C. Medard, 'Dispositifs électoraux et violence ethniques: réflexions sur quelques stratégies territoriales du régime kényan', *Politique africaine*, n° 70, September 1998, p. 32-39 ; J.M. Klopp, 'Can moral ethnicity trump political tribalism ? The struggle for land and nation in Kenya', *African Studies*, vol.. 61, n° 2, 2002, p. 269-294.

While the idea of *majimbo* was called upon by ODM during the campaign as a form of regionalised government that would benefit the poorest provinces, its reactivation was not without danger due to the multi-faceted meanings of the word, which also had negative connotations. Thus, even if they denied it, some in the ODM shared the ethnic vision of *majimbo*. Among them was William Ole Ntimama who, during the 1997 polls, presented himself as the strongest defendant of the rights of the Maasāi community against the Kikuyu in his Narok district. On the PNU side, it is due to its (*majimbo*) potential for conflict that the party opposed the idea, but also because the Kikuyu community was the first victim of its ethnic use. Regionalism as a concept reappeared during the constitutional discussions from the end of the 1990s, as a response to the centralised government model. The idea of 'devolution' thus became one of the most discussed themes, with the feeling that it allowed the promotion of minority interests and marginalised groups, and a more equitable sharing of resources in a society rife with inequalities. After the failure of the constitutional reform, some candidates, starting with Raila Odinga, once more took up the idea of decentralisation and suggested the introduction of *majimbo* to guarantee a more equal sharing of power between the centre and the periphery, and a better distribution of resources. From a political point of view, the idea was good as the theme and its ethnic undertones were very popular in some areas, such as the Coast, which had a substantial voter base of about 1.1 million. In the Central Province, with a majority Kikuyu population and already in the bag for Kibaki, the idea was unpopular, as it was a reminder of the violent acts aimed at the Kikuyu in 1992 and 1997. Odinga therefore had to unite all regions of the country, in his favour, against the Kikuyu.³⁴

This resurgence of the issue revealed a deep tension between the region and the nation and brought to light greater challenges, reflecting

³⁴ *Daily Nation*, 30 October 2007.

the limits of the government model that Kenya had maintained since independence. This was characterised by an all-powerful presidency and the absence of real power-sharing in a context where an exclusive ethno-regional conception of power leads many “*wananchi*” to think that it is only the ethnic group of the President that benefits from the fruits of power. The *majimbo* idea was a reminder of the problems of unequal allocation of resources between the various regions, efficiency, political transparency in development as well as citizen participation. The promotion of the principle by Odinga was also part of his speeches on the need for change, in opposition to the continuity promised by Kibaki.

Two men, two images

The competition between the two favourites, Odinga and Kibaki, symbolised the political battle between the Luo and Kikuyu, which has fired up political imagination in Kenya since independence. The potential victory of Raila Odinga would have been a return to history,³⁵ and his accession to the presidency would have represented a victory against the Kikuyu, accused of having hoarded power.³⁶ Besides, having renounced his candidature to support M. Kibaki in 2002, the Luo leader held onto 2007 as his best chance of accessing the presidency. He sought to give himself a national image, describing himself as “The

³⁵ Having refused the offer from the British to lead Kenya while Jomo Kenyatta was not free, Oginga Odinga let him take over the leadership of the country.

³⁶ E.S.A. Odhiambo, ‘Hegemonic enterprises and instrumentalities of survival: ethnicity and democracy in Kenya’, in B. Berman, D. Eyoh, W. Kymlicka (eds.), *Ethnicity and Democracy in Africa*, Oxford, James Currey, 2004, p. 167-182; A. Oloo, ‘The Raila factor in Luoland’, in H. Maupeu, M. Katumanga, W. Mitullah (eds.), *The Moi Succession...op. cit.*, p. 159-196. The Luo were believed to have been marginalised under Kenyatta and Moi and the proof is in the marginalisation or assassination of principal Luo political figures such as Oginga Odinga, Tom Mboya and Robert Ouko.

People's Candidate" against the Kenyatta and Moi³⁷ dynasties. He promised a "third liberation" after independence and the 2002 political transition, to cure the country of corruption and tribalism. Thanks to his campaign themes, R. Odinga was very popular among the youth of all ethnic groups, who were strongly affected by unemployment in a system tainted by inequalities. In comparison, Kibaki appeared as the candidate for the business class,³⁸ basing on his economic record to promise that "*the work would continue*".³⁹

More than the ethnic factor, the opposition between the two forms of power that structured the campaign explains why the failure of "The People's Candidate" resulted in such an outpouring of violence in poor areas of the towns, where the youth and the poor, having barely benefited from economic growth and the effects of government policies, had placed high hopes on the possibility of a change in power.

Despite disequilibrium in the candidates' resources (for example in access to public media and in the use of State machinery), throughout his campaign, Odinga demonstrated his skill in using images and shock tactics, also confirming his capacity to mobilise crowds and sustain popular enthusiasm. He had proved this particular skill in 2002 during the NARC campaign and contributed to Kibaki's victory. Faced with an apparatchik like Kibaki, Odinga played on his past as a prisoner and opponent of the Moi regime. He appeared as a master propagandist, playing the conspiracy card and posing as a victim. During the campaign, for example, he affirmed that the difficulties surrounding the registration of ODM were part of the Executive's strategy to weaken the opposition

³⁷ For Odinga, the Kibaki-Moi-Kenyatta alliance aimed to guarantee this supremacy and Kenyatta agreed to support Kibaki in 2007 in exchange for his support in the 2012 elections.

³⁸ An economist trained at Makerere University, then at London School of Economics, Kibaki is a political veteran—elected since 1963, he was Vice-President in the Moi régime, after which he became an opposition figure in the 1990s and founded the Democratic Party.

³⁹ *Kazi iendelee*—may the work continue—was a PNU slogan.

or that the failure to renew the mandate of the Vice-President of the Electoral Commission was intended to rig the elections. Besides, the composition of this Commission raised controversy throughout the campaign, as all members of this body that had controlled the 2007 elections had been appointed or had had contracts renewed by Mwai Kibaki.⁴⁰ Nevertheless, the latter tried more than to show that he had the strength for a second term⁴¹ to prove the independence of the Commission. On the opposite, his two main challengers, R. Odinga and K. Musyoka had the advantage to be seen as “young” and dynamic, K. Musyoka, the outsider, capitalised on his ‘Mr. Clean’ image by making his personal wealth public, as a sign of his dedication to financial transparency and the battle against corruption.⁴² Basing on the strong religious nature of the Kenyan society, he also used his reputation for piety and of being a born-again Christian, using terms such as ‘miracle’ and ‘prophecy’ during the launching of his campaign at Uhuru Park in October 2007. He believed that he would surprise everyone by snatching the presidency from the two favourites.⁴³ The politicians thus played off on values (faith, health, honesty) and not only on political networks or on ethnicity.

Religion was actually a recurrent theme throughout the electoral campaign, especially after the rendering public of the agreement between R. Odinga and a group of Muslim leaders, in which he committed to regularly respond to the critiques of the group,⁴⁴ in

⁴⁰ According to an agreement completed in 1997, the opposition should have proposed names for half the members of the commission. However, this agreement was never subjected to law and therefore, the President had no obligation to honour it.

⁴¹ On a visit in Mombasa, Kibaki walked the streets to prove that he had the energy and vitality to take on second term. *Sunday Nation*, 14 October 2007.

⁴² *Daily Nation*, 13 December 2007.

⁴³ ‘ODM-K launches campaign’, *Daily Nation*, 15 October 2007.

⁴⁴ These demands were mainly on the delay in the obtaining identification papers, harassment of some Muslims who they claimed were victimised by the authorities within the framework of the fight against terrorism or their marginalisation in terms of education and employment.

exchange for the support of the religious leaders. Despite having to endure the criticism of some Christian leaders, this agreement allowed Odinga to ally himself with the influential Muslim minority, towards whom Kibaki also increased efforts.⁴⁵ It is nevertheless quite surprising that the Muslim representatives took up as much media space as they eventually did. This is because Christian churches have always appeared as the most influential religious structure in the public arena, playing a fundamental role in the political debate in both 1992 and 1997.⁴⁶ During the campaign in 2007, just as in 2002, most Christian leaders took a neutral stance, simply reminding citizens of the importance of voting and of holding free, fair and peaceful elections.

Whereas the outburst of violence that affected Kenya after the announcement of the controversial results of the presidential elections may have surprised most observers, it is nevertheless irrefutable that all through the campaign period, there was evident tension, given the stakes and the explosive nature of some topics such as *majimbo* or the unequal access to resources. By promising a sharing of power and national wealth and by posturing as the candidate for the underprivileged masses, Raila Odinga created huge hopes among the youth and the poorest of society. The violence that broke out from 27 December 2007 were mostly an expression of the disappointments of those who had voted for change in 2002 and had not experienced any improvement in their situation. Having expressed their desire for 'a better life'⁴⁷ through voting, after the failure of their candidate, a section of the population resorted to

⁴⁵ In October, Kibaki formed a team to consider the issues raised by the Muslims (discrimination, harassment) and he also announced the setting up of an office for issuing of passports to Muslims, in order to facilitate their pilgrimages to Mecca.

⁴⁶ For more on the relationships between the Churches and politics, refer to H. Maupeu, 'The churches and the polls', in M. Rutten, A. Mazrui and F. Grignon (eds.), *Out of the Count: the 1997 General Elections and Prospects of Democracy in Kenya*, Kampala, Fountain Publishers, 2001, p. 50–71; H. Maupeu, 'Religion and the elections', in H. Maupeu, M. Katumanga, W. Mitullah (eds.), *The Moi Succession...op. cit.*, p. 33–68.

⁴⁷ *Maisha Bora*, meaning a good life, was the slogan taken up by ODM.

violence not only to express their anger but also to appropriate the wealth that they had hoped to have access to.⁴⁸

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CAUGHT BETWEEN INFORMATION AND CONDEMNATION:

The Kenyan media in the electoral campaigns of December 2007

*Brice Rambaud**

The Kenyan media played an instrumental role both during campaigns leading to the country's general elections in December 2007 and the ensuing political mess that the country was plunged into following the disputed re-election of President Mwai Kibaki. Strategically placed in both occasions, it ably performed the double task of keeping the public well informed of the political events as they unfolded and at the same time condemning wrongs by the political elite.

In its functional role as a civic educator, factual reporting took centre stage especially during meetings and rallies. The print media presented a platform for debate, where political activists and the civil society engaged each other in discussing key issues on the political agenda (devolution of power, tackling corruption, etc.). M. Kibaki, the *Party of National Unity* (PNU) candidate, seemed to receive more media coverage than his adversaries by virtue of being the sitting president. Nevertheless, it was felt that there was balanced coverage and his two main opponents — Raila Odinga of the *Orange Democratic Movement* (ODM) and Kalonzo Musyoka of the *Orange Democratic Movement-Kenya* (ODM-K) — were given ample publicity.

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Since November, the media fraternity in an act of condemnation spearheaded by the press strongly denounced the strategies used by the two rival camps PNU and ODM. It was felt that propaganda and ethnicisation of issues were the driving force in strategies to gain mass support. As the violence progressed in the Rift Valley, they repeatedly exonerated the political community. Reading the gravity of the post-election violence, the main media houses made a concerted effort to promote responsible journalism. They appealed for dialogue and national unity.

This ambivalence in the coverage of the elections that tore the media between informing and condemning that will be focus of attention. The first highlight will be the enormous attention the media gave politics during the electioneering period. Secondly, a spot light on the print media will make it possible to analyse the stakes and debates in the election campaigns. The final point of focus will be media reaction to the political turbulence that rocked the country after 30 December 2007, a period marked by state clampdown on media freedom and unanimous condemnation of the violence and an unprecedented professional unity.¹

POLITICS — KENYAN MEDIA'S FAVOURITE THEME

Kenyans show keen interest in their country's politics. The local dailies jokingly refer to them as '*political animals*'² and the media understood this perfectly. There was demand for complete coverage of the three

¹ The study took the form of a three week survey in Nairobi where most of the media stakeholders are based, semi-informal meetings with journalists and managers of the three main media categories (print, radio and television) as well as observation of live broadcasts. A qualitative analysis of the press was carried out following the election campaigns through the country's two leading dailies, *The Daily Nation* et *The Standard*, from 27 November to 27 December 2007. This was also possible through the web sites of the two newspapers.

² "Kenyans are political animals, almost to the last man and woman, and 14.2 million of them have registered to vote in the 10th General Election on December 27. They are avid consumers of media content". *The Standard*, 7 November 2007, "The Kenyan media environment".

main candidates, party news, candidate's campaigns or the campaign strategies of their respective teams. The media took full advantage of these elections to advance real media freedom they enjoyed during the five years of M. Kibaki's presidency, which was characterized by an expanded democratic space.

The growth of Kenyan media under "Kibaki I"

The Moi regime (1978 – 2002) was characterised by many attempts to gag the media. The government exercised a stranglehold control on the audio-visual sector until late 1990s. M. Kibaki's first directive (2002 – 2007) was to allow full freedom of expression and the emergence of private radio and television stations.³

Freedom of the press

In December 2007, the media, which plays a major role in providing checks and balances against M. Kibaki's presidency, lauded the wider democratic space achieved in the last five years. According to *The Daily Nation*, Kenya's leading daily newspaper, one of the main contributions the Kibaki regime made was to nurture greater freedom of expression⁴. In fact, State House no longer interfered with media content was the case before; wider variety of opinions could be expressed; the government could tolerate criticism; the civil society could speak with a stronger voice; and there was tolerance for a flurry of opinions often bordering on defamation. Furthermore, the availability of information and images in *The Daily Nation* and its close competitor *The Standard*, strengthened the case for a stronger opposition. There was mushrooming of commercial private radio stations broadcasting

³ B. Rambaud and A.-J. Tudesq, 2007.

⁴ *The Daily Nation*, 29 December 2007 : 'Kibaki's greatest legacy is freedom of expression'.

in English, Kiswahili and local vernaculars, which had been disallowed during the Daniel arap Moi era. These made it possible to disseminate information, especially to the rural fraternity. This greatly reduced monopoly of the state owned *Kenya Broadcasting Corporation*.

The war had not been won yet. Attacks on press freedom were witnessed following reports on M. Kibaki's *Cabinet* and the first lady Lucy Kibaki. These were isolated cases but they had a great impact. The so-called *gutter press* — sensationalist opinion press and the multimedia outfit Standard Group suffered regular raids by the in 2003⁵. Tension between the government, which had been accused of being deliberately slow in reacting to criticism since losing in the referendum of 2005, and the press, which appeared extremely unwavering towards the Kibaki administration, reached its peak on 2 March 2006. For no clear reason, the police raided the *Standard* printing press in the industrial area and the *KTN* television station, owned by the same group⁶: copies of the daily were burnt and production equipment confiscated. *KTN* had to suspend broadcast until the following day. The raid provoked demonstrations throughout the main cities and towns across the country. The Standard Group registered huge losses in advertisement revenue. The government called on all public service organisations to boycott the media house and instead channel their advertisement through media that was sympathetic to the government...⁷

The economic boom

Greater freedom of expression led to significant liberalization of the electronic media sector and the print media remained a beehive of activity. From 2002, the Kenyan media registered unmatched economic

⁵ B. Rambaud and A.-J. Tudesq, 2007.

⁶ An article of the *Standard*, published on 25 February 2006, on a secret meeting between M. Kibaki and his opponent K. Musyoka may have displeased some people at State House.

⁷ Reporters sans frontières, 'Le gouvernement ordonne un boycott publicitaire des médias du Standard Group', 19 avril 2007.

growth. The number of media grew further emphasizing their role in the democratization process which began in 1991.

The print media continued to dominate. The movers in the sector remained the two dailies, *The Daily Nation* and *The Standard*, rivalling each other in distribution and influence over the Kenyan elite. *The Daily Nation* boasted the sale of 190,000 copies⁸ while *The Standard* registered 80,000⁹ copies sold. Both belong to the two great historical multimedia houses — Nation Media Group (NMG) and Standard Group. Their editorial approaches are not similar but they both made a remarkable effort at giving a balanced coverage of the 2007 General Elections.

Reaffirming dynamism in the market in year 2007, three other dailies emerged, increasing the total number to eight. NMG launched the *Business Daily* specialising in economic affairs and finance. This was followed shortly by *The Daily Metro*. Patrick Quarco — the proprietor of the commercial radio stations *Kiss FM* and *Classic 105* — launched *The Nairobi Star*. The last two were tabloids that drew inspiration from the English experience; they offered the younger public a less political content in terms of “*lifestyle, music, sport and news in brief*”.

The print media remained vibrant and quite diversified. In April 2007, the three-month publication *Expression Today* by the Media Institute Organisation owned by David Makali made a comeback into the media circles. It had been closed down in early 2003 when M. Kibaki ascended to power.

Only the so-called ‘gutter’ press seemed to be losing ground. Despite its availability in Nairobi, (*The Independent*, *Kenya Confidential*, etc.), the public was no longer drawn to this sensationalist press as they were in the sunset days of the Moi era (1997 – 2002). The leading newspaper

⁸ Source: Nation Media Group (NMG) distribution department, December 2007. It is noted that *The Sunday Nation* distributes 220,000 copies every Sunday; it is the best selling newspaper in East Africa and one of the best selling in black Africa.

⁹ Source: Standard Group distribution department, December 2007. *The Sunday Standard* send out 100,000 copies.

in this category, *The Weekly Citizen*, seemingly came off better than the others, producing 30,000 copies a week.¹⁰

The growth in the media greatly benefited the electronic media sector, starting with the radio. Since the liberalization of the airwaves just after 1996, the sector experienced rapid expansion after 2003, with the Kibaki government allocating numerous frequencies to private investors. As a result more than fifty stations were in operation in 2007. Alongside KBC, many national and regional radio stations sprung up. Since 2003 privately owned radio stations broadcasting in vernacular have mushroomed, initiated mainly by private individuals, for example *Kameme FM* which transmits in kikuyu, *Kass FM* in Kalenjin, *Radio Victoria* and *Fish FM* in Dholuo as well as a number initiated by the Royal Media Services, which also founded *Citizen FM* and *Citizen TV*. In 1999 the group ventured into radio broadcasting in vernacular languages: *Inooro FM* in Kikuyu and *Ramogi FM* in Dholuo, then *Mulembe FM* in Luhya, *Musyi FM* in Kikamba, *Chamgei FM* in Kalenjin, etc.

The television sector saw the arrival of new players into the market: *Sayare TV* in 2004 and *K24* in 2007. *KBC* still enjoyed the lion's share of the market, but the Kenyan public seemed to prefer the privately owned *Kenya Television Network (KTN)*, started in 1990) and *Nation TV* (NTV, since 1999). The two stations under the ownership of these highly placed business rivals continue to thrive due to a growing advertising market. Other stations — the state controlled *KBC* and the privately owned *Citizen TV*, *Stellavision TV* and *Family TV* seemed to be way behind in comparison to the quality of information and “modernization”¹¹ of programmes achieved by *KTN* and *NTV*.

The growth of the electronic media added a new dimension to

¹⁰ Interview with Willy Kimanzi, Editor-in-chief of *Weekly Citizen*, 11 December 2007.

¹¹ For example, one of the legal battles between the two largest private stations that caught public attention was the right to air the successful American soap opera, *Desperate Housewives*. KTN emerged victorious.

the 2007 general elections. The reader, the listener and the television viewer had a wide range of sources of information in English, Kiswahili and other local languages to choose from. Furthermore, advertising by political parties, which had been confined to the print media since the return of multiparty politics in 1991 was redirected to the radio and to a lesser extent, the television in the wake of the 2007 elections. Only an advert or two per day was dedicated to advertising the big parties (especially PNU and ODM): much less than in 1992, 1997 and 2002, when parties used to spend record sums of money just to get an electronic media presentation of their power structure.

Economic growth greatly favoured the three media powerhouses, the NMG, Standard Group and Royal Media Services. With the general elections round the corner these three adopted diverse editorials which were greatly influenced by their owners.

Media integrated in politics

Electoral campaigns largely dominated media content and the Internet was not left out. Certain editorial columns featured prominently during the electioneering period and many journalists contested the polls as candidates.

A largely election-oriented content

The Kenyan media mobilized to cover the 2007 election campaign. Politics dominated their content, especially after Kalonzo Musyoka announced in August he was running on the ODM-K ticket.

For a period of five months, the print media, radio and television carried out a crucial task of gathering information and comments.¹² Journalists covered many meetings across the nation. In a polarized

¹² Thanks to colonisation by England, journalism in Kenya is a mirror image of Anglo-Saxon tradition, distinctly separating fact and analyses.

field, PNU and ODM traded political blows to exhaustion with mudslinging targeting politicians in rival camps. Franck Ojiambo Wanyama, Editorial Administration Manager of NMG, admitted the fatigue of their journalists at the beginning of December 2007. He explained that large political parties were monotonous in the way they held their meetings and that the journalists felt obliged to follow the proceedings, all in the name of maintaining equal coverage of the two principals.¹³

The print media was particularly interested in the election campaigns: rallies, statements, scrutinizing strategies, etc. In November and December 2007, nearly all the dailies and weekly newspapers carried headlines only related to the campaigns. During the two months, *The Daily Nation* set aside 5 to 13 pages of printed material on this one topic (a varying total of 60 to 72 pages). *The Standard* gave it even more: from 6 to 15 pages per day (a sum total of 40 pages)!¹⁴ Other newspapers *The People Daily* (50,000 copies) and *The Kenya Times* (15,000) bore the same “electoral gravitation”. A tendency with two consequences: a rather monotonous content and the impression that Kenya had no other news than politics.

The political debate took centre stage in the press. Newspapers reported and commented on positions of political activists and the civil society (mainly lawyers and members of various churches) on the main campaign issues and the Kibaki–Raila confrontation. They assessed the first five years of Kibaki’s presidency and stressed the change in the

¹³ Interview with F.O. Wanyama, Editorial Administration Manager of NMG, 6 December 2007. PNU and ODM put pressure on the giant media houses in an effort to influence them in the coverage of elections. ODM published an open letter to the Nation Media Group accusing it of openly covering the elections in favour of PNU (*Expression Today*, November 2007, pages 18–19: ‘Kenya: ODM accuses major Kenyan paper’). PNU also sent a similar letter to the Standard Group in early November (*The Daily Nation*, 9 November 2007: ‘High poll stakes lead to in-depth media coverage scrutiny’).

¹⁴ The prize goes to the latter newspaper which dedicated 40 out of 56 pages in its 23 December edition on election campaigns. Refer to *The Sunday Standard*, 23 December 2007: ‘History in the making’.

Cabinet, from the euphoric ascent to power with NARC to the 2005 constitutional referendum defeat. They scrutinized “*the Kibaki legacy*”, which according to them constituted five years of sustained economic growth but poor performance in the fight against corruption.

The electronic media sector equally gave excellent coverage to the elections. The morning, midday and evening bulletins as well as the endless talk shows gave prominence to the campaigns. Every piece of material was discussed, contested and politicized. Commercial radio stations, which owed their growth to advertisements (talk-shows, music), found it difficult to ignore the subject. Thus, *Kiss FM*, among the first commercial radio stations in Kenya,¹⁵ started a half hourly report or news on the elections ‘*Kiss 100 Election Update*’; the closely followed Sunday talk show ‘*Crossfire*’, was nothing but politics! Its sister station *Classic 105* redirected ‘*Kivumbi*’ — a talk-show in English and Kiswahili on social issues to concentrate on a sole topic, politics.

Television was also dominated by election campaigns. Alongside the newspapers, television stations carried reports on rallies held by the three main parties. Government controlled television station, *KBC* followed M. Kibaki’s rallies closely. Private television stations were more inclusive. Generally speaking, most of the rallies held by M. Kibaki, R. Odinga and K. Musyoka were covered, but the sitting president, by virtue of his position often stole the headlines. The two market leaders, *KTN* and *NTV*, had comprehensive coverage of election news.

The two groups behind these stations invested in ultramodern technical equipment to stay on top of the television sector in order to find a place in this fast expanding market. There were huge financial implications enabled by a large advertising budget. NMG purchased 10 Outside Broadcasting Vans (OBV) while the Standard Group bought eight. These vans were equipped with satellite antenna and would

¹⁵ Steadman and Associates International Research Center, *Kenya Media Diaries, Quarter 4*, Nairobi, 2005.

allow a team composed of a cameraman and an editor to transmit live broadcast and record pictures, run a commentary on a topic before sending it for editing¹⁶. *KTN* and *NTV* also acquired lighter equipment for their cameramen, notably the Broadband Global Area Network (BGAN), to record and send images via wireless Internet. These two technological investments allowed the stations to cover the campaign throughout the country. **The electronic media battle continued to heat up in Kenya.**

What is more, the initiative in the television sector and the political programmes broadcast throughout the year, demonstrated the private stations' eagerness to inform the public about the stakes in the elections. A case in point is the *NTV* productions of several special weekly programmes at its Nairobi studio and in the field: '*The People's Voice*', '*On the Spot*', '*Turning on your vote*', '*Agenda Kenya*'. '*The Making of a Nation*' was a new weekly political programme, produced under the auspices of Hillary Ng'weno, a renowned Kenyan political analyst. This historical programme lasting 30 minutes, with images and interviews, retraced the political path of Kenya through its memorable events (independence, the assassination of Tom Mboya, the 1982 coup attempt, etc.). The aim was to place the 2007 election on a global context and to understand the history of issues introduced in the campaign (Majimbo, the Kikuyu – Luo rivalry in Kenyan politics, etc.). '*The Making of a Nation*', adapted from a publication by Ng'weno, was published every week in *The Daily Nation*.

Mobilisation of NTIC

In 2007, the electoral campaign the New Technologies of Information and Communication (NTIC) widely used, in particular

¹⁶ Interview with Emmanuel Juma, Head of TV News, *NTV* on 11 December 2007.

the Internet and the SMS,¹⁷ at best (news and debates) and at worst (shunning others on ethnic grounds).

The Nation Media Group and the Standard group, had vibrant Internet sites for their dailies — <http://www.nationmedia.com> and <http://www.eastandard.net> respectively, which were specifically set up for the elections. NMG's '*Kenya Elections 2007*'¹⁸ combined articles on election campaign as published in the *Daily Nation*, NMG journalists' weblogs and NTV video reporting, which was aired in partnership with the YouTube site. These were essentially a collection of reports on meetings, party press conferences and the satirical political programme '*Bull's Eye*'. This multimedia site proved quite popular with the Kenyan Diaspora judging by the comments after each video,¹⁹ which was the ultimate goal of the group. The Standard Group on the other hand launched a platform on the Internet to cover the elections.²⁰ It reviewed newspaper articles by order via special manuals. There was good coverage of the elections on this website.

The internet was also a platform for debates and expression of opinions. Consequently Kenyan blogs increased in 2007. The one that caught the media's attention was that of Joe Kadhi²¹ a renowned journalist. Candidates in the elections had their websites too.²²

The NTIC were also used with hostile intentions. Towards the end

¹⁷ *The Sunday Standard*, 9 December 2007: 'Campaigns move to the Internet and cell phones'.

¹⁸ <http://politics.nationmedia.com>.

¹⁹ Each video was seen by tens of thousands of surfers since the YouTube site registers 10 to 40,000 clicks per online video. After the troubles that broke out following the disputed presidential election results, the videos showing images of the demonstrations and looting scenes were the most popular. For example, the report 'Nairobi: Violence and Refugees' posted on the 2 January 2008 on the site was visited more 53,000 times in a week.

²⁰ <http://www.eastandard.net/electionplatform>.

²¹ Currently a journalism lecturer. <http://www.blogger.com/profile/13054323858001450971>.

²² <http://www.kibakiteni.org> ; <http://www.raila07.com> ; <http://www.kalonzomusyokaforpresident.co.ke>.

of 2007, mailboxes of Kenyans were full of spams and “black mails” from political activists. The PNU – ODM war really took root on the net. Spams and correspondence from one camp spread rumours and ethnic attacks on the rival camp. Similar techniques of misinformation about opponents aimed discrediting them were used through the SMS. The ‘Black SMS’ or ‘Black Propaganda SMS’, circulating through mobile phones, became the subject of numerous articles in the press. For example in early December, an SMS announced the sudden death of an ODM representative, Fred Gumo, candidate for Nairobi’s Westlands constituency when he was alive and well.²³ Other rumours circulating via SMS included the plot to rig the elections, by printing ‘parallel’ ballot papers in Belgium,²⁴ a PNU minister implicated in this scheme to steal the election and members of the Electoral Commission of Kenya (ECK) were supposedly in cahoots with the government.²⁵

On a positive note, the SMS did not only serve the propaganda of political activists, but the media used it to interact with the public. The NMG launched a service to send information in real time via SMS (*Nationmobile*, Break 6667). Other tabloids *Daily Metro* and *Nairobi Star* followed suit with their special columns (SMSChat) which allowed readers to express themselves. Some electronic media talk-shows encouraged the public to give their views about topics of discussion via their mobile phone.²⁶

²³ *The Standard*, 5 December 2007, ‘We are not amused’.

²⁴ The official ballot papers are printed in England. *The Daily Nation*, 5 December 2007.

²⁵ *The Standard*, 4 December 2007.

²⁶ This was the case with *Agenda Kenya* of NTV. Emmanuel Juma, Head of TV News for the station explains, “the use of SMS is a success. The mobile phone is a phenomenal communication tool here, as you know Kenyans want to participate in debates, give their opinions. Ironically, it is the rural folks and those living in provincial towns communicate by SMS, not the Nairobians”.

Media as political players

The role of the Kenyan media was not limited to covering the election campaign and informing the citizen: certain groups or editorials clearly took sides with candidates in the race; some media were directly created by parties they supported; journalists even contested for seats in the elections. In Kenya, the media became a political player in every sense of the word.²⁷

The first evidence of the relationship between the media and politics, as is always the case during each election period in the multiparty era, newspapers and radios were created by political parties during campaign periods to offer support for their candidates. This was clearly obvious in the press: PNU launched *The Jamhuri Magazine*, entirely dedicated to M. Kibaki, *The News Review* published every two months was pro-ODM and *Newsbreak*, ODM-K. In the electronic media, we see the radio *Umoja*, started three months before the elections by R. Odinga's allies, with massive pro-ODM content.

The second indication is that the 2007 general elections were characterized by a number of journalists seeking parliamentary and civic seats mostly on the small party tickets. From the managing editor to an ordinary reporter, many media professionals joined the fray to campaign for an elective post. Chacha Mwita, Managing Editor of Standard Group up to September 2007, contested the Kuria constituency seat. Yusuf Hassan of the *BBC* sought to capture the Kamukunji seat. Moses Kanyira, of *Kameme FM*, eyed Tetu. Pamela Mburia, radio journalist at KBC, was a candidate in Nithi constituency. Njoroge Karanja, formerly of Royal Media Services, contested in Subukia constituency against incumbent MP Koigi wa Wamwere, immediate former Assistant Minister of Information, himself a prolific editorialist (for *The People*

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The Assistant Minister of information, Koigi wa Wamwere, also talks of 'political activists': 'Journalists enter politics as an instinctive confirmation of what they are – activists'. *The Standard*, 7 November 2007: 'From Newsroom to Parliament'.

Daily). In the gutter press, Tom Alwaka, managing editor of *Weekly Citizen*, contested the Emuhaya parliamentary seat while his editor-in-chief, William Kyavi, stood as councillor at Makina Ward.

A highly politicized profession notwithstanding, political ambition by journalists indicated that their work could be seen as a springboard to political careers. The journalists took advantage not only of their technical know-how and political activists' ability to communicate, but also of their popularity among the masses to launch a political career. In the end, numerous media were partial. There was need to look deeper into the media structures, notably the strategic groups — to know what was at the core of their political orientation that influences their news reporting.

M. Kibaki dominated coverage in the electronic media category, with the state-owned *KBC* and the Royal Media Services ensuring his domination. The Standard Group and the daily *The Kenya Times* fluctuated between criticizing the Kibaki government and pro-Kibaki reactions by KANU activists. This gave them a balanced outlook with regard to the campaign and an incisive endeavour in analysing the Kibaki administration. *The Daily Nation*, like all the NMG media, was perceived to be in favour of the incumbent due to numerous state advertisements but deeper analysis of the content showed that the group had widespread coverage of the two principals; meetings with the directors of the group revealed that NMG did not take sides due to economic reasons. As for the other media, notably the commercial radio stations like *Kiss FM*, the NMG media, through *The Daily Nation*, *Taifa Leo*, *Business Daily* newspapers, the weekly *The East African*, *NTV* television *Easy FM* radio took extra care to give equitable coverage to M. Kibaki, R. Odinga and to a lesser extent K. Musyoka in order to show support for all their clients' parties.

With regard to television, a study on *media monitoring* led by the

Strategic Research and Public Relations and financed by the United Nations Development Program (UNDP), from 27 November to 10 December 2007, confirmed some hidden dispositions:

Table 1: Coverage of three principal candidates by the 4 main TV stations in Kenya from 27 November to 10 December 2007 (% TV airtime)

	M. Kibaki	R. Odinga	K. Musyoka
KTN	35	33	26
NTV	33	37	27
Citizen TV	56	27	12
KBC	54	29	15

Source: UNDP and Strategic Research PR in *The Daily Nation*, 14 December 2007: 'You're biased, Kivuitu tells KBC'

While *KTN* and *NTV* made an effort give a balanced coverage of the electoral campaign, *Citizen TV* (belonging to Royal Media Services) and *KBC* restricted themselves to information adversely in favour of the PNU camp. In the two stations, M. Kibaki appeared twice as much as R. Odinga. These quantitative statistics are similarly reflected at the qualitative level.

KBC radio and television became the government's mouthpiece after the defeat of M. Kibaki at the 2005 referendum. Former Managing Editor of Standard Group, Wachira Waruru, headed *KBC* from 2003 to 2005. This was a major step in the profession. But W. Waruru was shown the door after the 'NO' campaign triumphed and was promptly replaced by David Waweru. Editorial and production policy gradually

became biased along ethnic lines.²⁸ In 2007, *KBC* extensively campaigned for M. Kibaki, covering PNU rallies live for hours in the afternoon while R. Odinga only got a few minutes in the evening bulletin. This propaganda was disheartening for the profession, according to Mugo Theuri, editor-in-chief of *People Daily*:

KBC is a tragedy. It used to be better before, but once again it is a propaganda tool. There are many well trained journalists, but they do not want to do journalism, they want to be public servants above all!²⁹

Even Samuel Kivuitu, Chairman of the Electoral Commission of Kenya (ECK) confessed disappointment by the partiality displayed by the state media.³⁰ His letters of protest to the government yielded nothing.

M. Kibaki could also bank on undying support from Citizen TV and to a larger extent all the media owned by Royal Media Services group, print media through *The Leader* weekly and various radio stations (*Citizen FM* and the nine vernacular radio stations). The group proprietor, Mr. S. K Macharia is a close friend of Kibaki and they are both from Nyeri. He supported M. Kibaki's campaign in the 2002 elections. Five years later he is back again. This shrewd businessman was able to expand his chain of companies during the Kibaki era, thanks to radio frequencies allocated by the government from 2003. During the 2007 electoral campaign, the boss gave the client a boost. Mr. S.K. Macharia was known to pry into affairs of his chain of companies, according to a radio presenter in the Royal Media Services group:

Yes, he interferes. Just like everyone else! Royal Media Services is

²⁸ We witnessed that in the promotion of journalists in *KBC* — notably in the *KBC Board of Directors* and in the managerial team and in the Ministry of Information, only the Kikuyu, from the president's ethnic group or close to his network of friends, benefitted.

²⁹ Interview with Mugo Theuri, Editor-in-chief of *People Daily*, 4 December 2007.

³⁰ *The Daily Nation*, 14 December 2007: 'You're biased, Kivuitu tells KBC'.

pro-Kibaki, not openly, but indirectly. Macharia decides the editorial policy and he can call me this morning and say: 'Kibaki is in Kitale for a rally, go to Kitale and report on that'.

S.K. Macharia avoids bureaucracy, controls application of the editorial policy through internal memos, sanctions any deviants. In the group's vernacular radio stations, M. Kibaki is **represented in positive** light. Only one station *Ramogi FM*, which transmits in Dholuo in the Nyanza region, covered R. Odinga more, as he proved very popular in the region.

Radios and "ethnic disposition" in the voting process

The final level of politicization of the electronic media is evident in *Ramogi FM*. The local radio stations broadcasting in vernacular languages provided immense coverage for the preferred party and politician in their area of broadcast.

Kenyans voted in blocs and in most cases for the representative of their ethnic group at the national level. Therefore, in line with the political majority strength and listener representation in that community, it appeared that local language media was biased towards a particular candidate. The electoral mood of the public in support of any of the three main candidates directly influenced the editorial orientation of a regional radio. M. Kibaki seemed to be overwhelmingly preferred by listeners in Central Province: his campaign was largely covered by the radios transmitting in kikuyu like *Inooro FM* and *Kameme FM*. R. Odinga was super popular in Western and Nyanza provinces: *Fish FM* and *Ramogi FM* raised his mast higher than his contestants. K. Musyoka was favoured in his native Eastern Province: *Musyi FM* strongly covered his campaign. Radio stations transmitting in vernaculars treated the election with partiality, but in Kenya economic motives prevail. Benjamin Wangari, journalist in *Inooro FM*, shares:

Yes, the editorial policy of a local radio station depends on the vote in the area of transmission. Most of the people who understand Kikuyu were for Kibaki. He will probably have 90% of the votes in Central Province, his stronghold. Therefore we cannot give much information about Raila, otherwise we lose audience.

While the voting took an ethnic twist, some stations were careful not to irk their listeners. This is the case of *Inooro FM*. B. Wangari explains the necessity of caution in the administration of vernacular radio stations in a country where the ethnic background is politicized and the scope of an electoral campaign plays strongly on the sentiments of the community: thus at *Inooro FM*, very little was said on the land issues between Kikuyu and Kalenjin or even the implication of the Kikuyu in the national economy, to avoid inciting the two groups.

But this consideration does not apply to all. Some stations carried messages of hate. This was the case with *Kass FM* (in Kalenjin), which heavily campaigned for ODM and was accused of carrying materials of xenophobic nature vis-à-vis other communities (especially Kikuyu) and even individuals (mainly from the Kibaki administration)³¹. There are two sides to the problem: the lack of education on the part of journalists or presenters and the increase in talk-shows which gave voice to listeners holding opposing views, without a real anchor³². Chris Odwesso, editor-in-chief of *Kenya Times*, had a word of advice on the orientation of these radio stations during the electoral period:

Local radio stations have advantages: they encourage community participation in politics, promote their culture and language. This is a new market for the Kenyan media. But during the elections period, the tribal interests were at their strongest. They toyed with ethnic loyalty to win the audience. They had a negative campaign³³.

³¹ *The Daily Nation*, 31 October 2007: 'Vernacular radio stations accused over hate speech'.

³² *The EastAfrican*, 20 November 2007: 'Let's check ourselves on hate speech'.

³³ It is all a game. Source : Interview with Chris Odwesso, editor-in-chief of *Kenya Times*, 13 December 2007.

The dichotomy existed between professionalism displayed by some stations and radical utterances on the part of others. Then there was the ambivalence of reaching the public and handling news, which was equally mirrored in the print media.

THE ELECTION CAMPAIGN IN THE PRESS (*THE DAILY NATION* AND *THE STANDARD*)

In the analysis of election campaign coverage by the print media for the period between 27 November and 27 December 2007, specifically in *The Daily Nation* and *The Standard*, the role of the press fluctuated between providing mass information and condemning rising violence in the country. While the task of correcting injustices seemed to be yielding fruit, media attacks became more aggressive as the campaign gained momentum at the start of December 2007.

Ethnic case for informing and condemning

Editorial policies in the print media

The Kenyan daily newspapers were well prepared to cover the election campaigns. All editions carried rallies and statements and their management teams during in the summer of 2007 implemented their editorial policy. Some groups like the Standard Group organized special training for their reporters. The newly reorganized Media Council, a

self regulatory media body³⁴, in partnership with the (UNDP), also organized training for journalists who needed it. It also released a code of conduct to cover the elections, which was accepted in all the big media houses. The code of conduct appealed for the respect of the freedom of expression of all, a balanced and non-partisan coverage of the principal candidates and the admonition of ethnic strife. These were observed in the course of November and December 2007 by the leading newspapers in Kenya. On the global scale, the print media treated the elections in a balanced and responsible manner, even though M. Kibaki had a little edge over his opponents mainly due to his position as incumbent president.

M. Kibaki, R. Odinga and K. Musyoka regularly appeared in the news pages. The opening pages of the dailies for the next two months only reported on their rallies and party press conferences, where comments on their proposals often attracted debate. In *The Daily Nation* and *The Standard*, we generally found the same level of reporting on the campaigns by both M. Kibaki and R. Odinga. These dailies also selected headlines where both candidates appeared together in a photograph. This effort towards 'quantitative impartiality' could be viewed in two ways: a poor coverage of parliamentary candidates and the virtual insignificance of 'small' candidates in the presidential race. The specialized dailies, the business-oriented *Business Daily* (of NMG), *The Nairobi Star* and *The Daily Metro* tabloids gave little attention to the campaigns.

³⁴ Reconstitution in accordance with the Kenya Media Act which came into effect in October 2007. The new Media Council brought together media professionals (media owners, journalists and the Kenya Union of Journalists), members of the civil society (like the Law Society of Kenya) and members of the government. Its objectives are not only to sort out disagreements between the government and the media but also between the media and the public; to promote independence and freedom of the media; to encourage training and ethics among journalists. The reconstitution of this self-regulation body was a positive move: the Media Council earlier existed as an empty shell commanding little respect from the profession since its formation in 2000. See *Expression Today*, November 2007, 'Statutory Media Council is here', pp. 4–5.

The study of press content carried out by Strategic Research for UNDP³⁵ by Steadman and Associates³⁶ during the campaigns confirm that the press was balanced in its coverage of the elections. But the Kenyan reader perceived *The People Daily* as a pro-PNU paper, *The Kenya Times* and *The Standard* seemed pro-ODM while *The Daily Nation* leaned towards PNU.

Why these perceptions? *The People Daily* belongs to Kenneth Matiba, a Kikuyu political leader, like M. Kibaki. *The Daily Nation* was less critical of the state and the incumbent, if the advertisements published in it were anything to go by. It seemed like a Kikuyu stronghold, therefore certainly PNU.³⁷ The forces behind *Kenya Times* and *The Standard* were indigenous to KANU, the opposition party from 2003 to 2007.

But the findings contradict this public perception. K. Matiba did not turn *The People* into a political instrument, and his rivalry with M. Kibaki is well known.³⁸ *The Kenya Times* was sharply critical of M. Kibaki until the realignment of KANU with PNU in September 2007, which called for a less aggressive shift in editorial positioning. The main force behind *The Standard* was the retired president D. arap Moi, who sided with M. Kibaki's in the 2007 elections. But, if it is true that D. arap Moi's support made M. Kibaki more noticeable in this daily and "reduced" its criticism of the incumbent remains a weighty issue. Preferences of *The Standard* journalists signified determination to "side" with M. Kibaki who had, according to them, done little to

³⁵ <http://www.strategicafrica.com/uploads>.

³⁶ http://www.steadman-group.com/monitoring_index.php.

³⁷ Some newspaper readers have admitted not reading *The Daily Nation* because "it is a Kikuyu paper"...

³⁸ According to *The Standard*, the surprise candidature of K. Matiba in the presidential election "has been viewed as not so much out of a conviction to win the race, or even become an MP, but a statement to spite President Kibaki" (*The Sunday Standard*, 2 December 2007: 'Matiba's feeble comeback could cause shockwaves')

fight corruption and poorly redistributed wealth.³⁹ Furthermore the newspaper seemed to forget the constant efforts to gag the freedom of the press which was their favourite subject since 2003. Finally, in the matter of radio stations transmitting in vernacular, *The Standard* covered the election as part of its public objective. Douglas Okwach, *News Editor* of the daily, corroborates it:

In terms of editorial policy, we cover the two candidates as fairly as possible. We try to give them equal space and content. But we are seen as an opposition newspaper... it is a question of perception and communication. If you follow our operations you will notice that we sell more in the opposition regions: Nyanza, Rift Valley, and Coastal Provinces. Therefore if we carried a positive story on the government, we would sell less!⁴⁰

In Kenya, the opinion polls conducted by the media concluded that it was the readership that determined editorial orientation of a newspaper and not the reverse. Consequences in the perspective: though M. Kibaki and R. Odinga were covered equally *The Standard*, consideration for the electorate determined the choice of headlines and a critical angle against M. Kibaki and pages filled with commentaries from the civil society criticizing developments in Kenya in the last five years. Economic consequences: apart from public advertisements in *The Standard*, the paper attracted election announcements by ODM but M. Kibaki's campaign team seemed to avoid advertising in *The Standard*, preferring *The Daily Nation*, which sold well and had other strongholds (Nairobi, Central Province).

³⁹ These two critics are omnipresent in *The Standard's* opinion columns. During the elections campaigns, the daily for example published an interview with John Githongo, former Ethics and Governance Permanent Secretary in M. Kibaki government who had to go on exile after denouncing growing corruption in the NARC cabinet. On the first three pages, J. Githongo denounced "*the arrogance and corruption of a clique of cynical old men*"; he said that M. Kibaki did not honour the pledges in its 2002 election manifesto and should be judged on the strength of its failures on 27 December 2007. *The Sunday Standard*, 16 December 2007: 'Githongo breaks silence'.

⁴⁰ Interview with Douglas Okwach, *The Standard* news editor, 10 December 2007.

The editorial orientation of *The Daily Nation* was a lot more consensual. Avoiding unsettling anyone, the leading daily in Kenya reported more on ECK's meetings and the preparation of the election itself while the number of opinion articles on the political situation decreased and seemed to have less significance. Each day, the publication took calculated measures to ensure equitable reporting for both PNU and ODM. The same economic reasons were given by NMG. According to F.O. Wanyama, "if *The Nation* publishes pro-Kibaki stories, those supporting Odinga will not buy the paper: that has no economic weight."⁴¹ This was confirmed by Jaindi Kisero, Managing Editor of the regional weekly of NMG, *The EastAfrican*, confiding that when a paper chooses a political camp it loses on the commercial front.⁴²

In certain newsrooms in Nairobi, it was reported that the Aga Khan, the majority shareholder of NMG, asked the group management not to take sides, in order to safeguard the future of his multiple interests in Kenya.

Journalists' version of ethnicity

The ethnic angle in the 2007 election campaigns was ever-present — ODM, and to an extent PNU, conducted their campaigns with ethnic inclinations — compared to the 2002 election, where this was non-existent.⁴³ Despite certain laid down principles, the media themselves could not escape unscathed. This was evident in the relationship between the editorial orientation and the audience of the radio sector.

In December 2007, the print media clearly portrayed in an opinion

⁴¹ Interview with F.O. Wanyama, Editorial administration manager of NMG, *op. cit.*

⁴² Interview with J. Kisero, Managing Editor of *The EastAfrican*, 12 December 2007.

⁴³ There was a unity among all the social groups to remove D. arap Moi from power and the two principal candidates M. Kibaki and Uhuru Kenyatta, were Kikuyu.

poll that people were going to vote in blocs along ethnic lines. Thus on 10 December, *The Daily Nation* revealed in a headline the results of opinion poll on the intentions of voting by region. It was evident that: *“the candidates’ strongholds. The supporters of the principal aspirants in the race to State House expect to receive from their leaders a big share of the national cake if they win the presidency”*:

17 days to the general election, observations by the opinion pollsters show that the principal candidates in the presidential race enjoy a near-fanatic support in their area of origin (...). According to the last opinion poll by Steadman, President Kibaki enjoys 91% popularity in the Central province; M. Odinga enjoys 78 % of intended vote in Nyanza, while M. Musyoka would obtain 45% of the votes in Eastern. The Executive Director of the Strategic PR Research firm, Mr. Caesar Handa, said the distribution of the national resources represents the main reason why the individuals prefer to vote for someone from their community, especially in the presidential elections.

This regional support almost cost M. Kibaki and R. Odinga the campaign in their respective strongholds, as they chose to concentrate their efforts in the areas which were undecided, like the Rift Valley. The reintroduction of the ethnic argument in the general elections constitutes an extension of the “NO” campaign camp (Orange) during the 2005 constitutional referendum, which rested on the exacerbation of a parallel between “them” (the Kikuyu who were accused of amassing the wealth of the country) and “us” (all the other ethnic groups, which felt dispossessed). ODM, a party that emerged from the 2005 “NO” movement, the campaign strategy did not change: the concept was to appear as representative of the groups marginalized from power and those from least developed areas. In fact, the campaign became an attack on the “Other” (the Kikuyu clan in power accused of not redistributing the wealth). Numerous articles appeared in the print media condemning the use of ethnicity by politicians. This condemnation amounts to double speak. On the one hand, journalists criticized M. Kibaki of having mostly appointed the political elite from his group (Kikuyu)

to his *Cabinet* and his administration and specifically from his area (Nyeri), especially after defeat in the 2005 referendum. According to them that constituted a fatal political error and it frustrated the elite from other groups not represented in the government. This engraved in the people's spirit the idea that it is only through the presidency that the redistribution of public resources is possible.⁴⁴ On the other hand, the campaign strategy and utterances of ODM were outrageous: in its rallies and proposals, the pentagon was stirring up of sentiments against Kikuyu elite in power and the central government.⁴⁵

Ethnicity was a regular theme in the press, particularly in the Opinion pages. *The Daily Nation* and *The Standard* denounced its over-hyping in an aggressive campaign where every tool was used; massive use of ethnic identity, propaganda and misinformation, accusations and counter-accusations of fraud dictated the rhythm of the campaign coverage in the media; one expression featured constantly in the dailies: "*Dirty politics*"⁴⁶. The editorialists of both papers expressed

⁴⁴ According to Chris Odwesso, of Kenya Times : "*Every community should be represented in the Cabinet but it's not the case. It's driven by one region. The second Cabinet of Kibaki was a mistake, a frustration for many communities, which think their under-development is due to this issue. Administration was seen as reserved to one particular ethnic group. Raila surfed on the wave of frustration in 2005, and he's been doing the same in 2007*". Source: Interview, *op. cit.*

Journalists are not the only ones to launch this attack on Kibaki. During the electoral campaign, some civil society organisations under the watch of the Kenya Human Rights Commission (KHRC) denounced his political and administrative promotion of Kikuyu under M. Kibaki. Through its director, Muthoni Wanyeki: "*Appointments to positions of influence in the cabinet and elsewhere have taken an ethnic angle. Allocation of public resources has depended on ethnicity*", in *The Standard*, 5 December 2007: 'Rights body accuses State'.

⁴⁵ Proof: Radio advertisements by ODM for example were bold – "*It's time for a tribalism-free policy*" and "*It's time for a corruption-free government*", signifying that the PNU camp was both tribalist and corrupt.

⁴⁶ A example of special dossier on *Sunday Nation* of 16 December 2007: 'Battle of dirty politics'. Kipkoech Tanui, Managing Editor of *Sunday Standard*, makes the same observation: "*The reality of our political campaigns, dirtier as it gets, is that they are outcome-oriented. [...] The thirst for victory kills conscience. [...] In all cases of dirty politics what is never in doubt is that all the parties in the contest end up with egg on the face*" (*The Standard*, 30 November 2007: 'Propaganda wars spare no politician in dirty fights').

a common dissatisfaction: personification of parties and the lack of truly competitive manifestos; polarisation of discussions, with a strong PNU/ODM presence crystallised around identities leading to obvious voter response (the Kikuyu overwhelmingly voted for PNU, the Luo ODM, the Kamba ODM-K, etc.); the creation of perceptions of passion that are beyond description or rationalization, but which signify a potential ticking bomb. By invoking ethnicity, a politician seeks to create 'loyalty by obligation' of the individual in relation to the ethnic community, which robs democracy of its essence because it impairs debate. Arguments only appeal to the emotion and the irrational.

The two dailies made a special effort to enlighten the masses in order to place ethnicity on the historical map of Kenya as a state⁴⁷, and above all to explain that it can only be seen as an electoral lever⁴⁸ for the individuals. *The Daily Nation* recalled that: "*Ethnic hatred is perpetuated to win votes.*"⁴⁹ In the same daily, Philip Ochieng', a columnist, calls for understanding and unity between the groups in order to fight the real enemy of the state, the post colonial economy, in a column entitled "*Do not be afraid of the other tribe, embrace it.*" He wishes that the educated always aspire to this "most basic passion" and warns the reader:

The leader of a large ethnic group is never really motivated by the suffering of his community. His interest is only to excite the group in order to enhance his personal political power and his financial ambitions. That is why the leaders agitate to raise a mass of social imbeciles

The newspapers also called for individual responsibility on the part of voters, to vote for ideas and not identity affiliation⁵⁰. Professional in its effort to inform and condemn, the daily press attacked ethnicity

⁴⁷ *The Standard*, 24 December 2007: 'Election is about legacy of ethnicity in the State'. The rubric 'The Making of the Nation' in *The Daily Nation* supports it too.

⁴⁸ *The Daily Nation*, 24 December 2007: 'We must strive to detribalise our political allegiances'.

⁴⁹ *The Daily Nation*, 3 December 2007: 'Spare youth your ethnic bigotry'.

⁵⁰ *The Daily Nation*, 29 November 2007: 'Why must we blame everyone but ourselves over tribalism?'. *The Standard*, 5 December 2007: 'Resist ethnic pressure'.

with great discretion. Journalists chose in some instances not to reproduce the equivocal utterances of certain politicians at rallies. The Opinion and Letters to the Editor pages of the leading newspapers were also closely monitored to sieve any hate messages so as not to fan any differences in an already polarized political environment.⁵¹

As for the vernacular radios, there was however some detour in the press. Even as the dailies exercised responsibility in covering the campaigns and dealing with the issue of ethnicity the basic moral principles of the profession were trashed by the 'gutter press'. Every 'gutter' newspaper took sides with a political party. Being pro-Kikuyu, *The Independent* (8000 copies a week) carried out a spirited campaign against R. Odinga, which culminated in the 17 December 2007 edition in which the ODM leader was compared to Hitler in the paper's headlines.⁵² On the other hand, *The Weekly Citizen* continuously attacked M. Kibaki: the headlines of the issues preceding the election said that R. Odinga was only a few days from a historic ascension to power⁵³ and that M. Kibaki was preparing to vacate State House.⁵⁴ This biased treatment of the campaign was accompanied by ethnic accusations. The 10 December edition of the same weekly, for example, wanted to prove in page 3 that 80% of officers of the City Education Department were Kikuyu from Mount Kenya region. There was a list bearing name, designation and ethnic group of each employee to drive the point home.

Information and condemnation of violence

The print media without a doubt played its role of informing, covering

⁵¹ Magesha Mguiri, Opinion Editor of the *Daily Nation*, 11 December 2007.

⁵² *The Independent*, 17 December 2007: 'Raila and Hitler: are they alike?'. The comparisons are: like Hitler, Raila wants power at all costs; like Hitler, Raila does not believe in God; the hatred of Hitler towards Jews is the same as Raila towards the Kikuyu...

⁵³ *The Weekly Citizen*, 10 December 2007: 'Few days to power!'.

⁵⁴ *The Weekly Citizen*, 17 December 2007: 'First family packing from State House'.

the electoral campaigns of the three main parties (PNU, ODM, and ODM-K) and their preparation for the elections, by informing the public about the strategies of political players. The press also provided a platform for political debate. Finally, in the face of escalating electoral violence, it transformed itself into a campaigner for moral issues.

Information role

The Daily Nation and *The Standard* carried out a significant task of gathering information. From 27 November to 27 December 2007, an averagely high number of 18 reports were published per day in *The Daily Nation* and 15 in *The Standard*. Articles containing analysis material featured less prominently. During that period, the average was 3.3 articles of daily commentaries in *The Daily Nation* and 2.5 for *The Standard*.

Certain trends in this prolific covering of the campaigns have been ignored. The two dailies closely followed the PNU and ODM campaigns, as they held rallies throughout the country and ODM-K campaigns to some extent: reports, recorded speeches, press conferences, and detailed pledges by candidates. The election by the Electoral Commission of Kenya (ECK) was also closely monitored, especially the technical preparation (printing and distribution of the ballot papers, polling stations, etc.) The chairman of the electoral commission, Samuel Kivuitu, featured a lot in the print media. He frequently spoke on developments in the preparation for the elections to allay uncertainties since ODM and ODM-K campaign teams had expressed possible election fraud on the part of PNU. Throughout the month of December they questioned Kivuitu on the matter. From the allegations relayed in the press and to which S. Kivuitu's response remained: "Prove what you are saying", R. Odinga's campaign strategy seemed to be three-fold: occupy the media playing field; discredit PNU, which had been accused of using state machinery (police and

provincial administration) to seek M. Kibaki's re-election; to pose as the victim.⁵⁵

Worth noting is that the ECK placed many advertisements in the two dailies appealing to Kenyans to vote, with bold slogans in both English and Swahili: "*Don't complain about corruption if you don't vote*", "*Elect leaders who don't buy votes*", "*Elect leaders who don't incite violence*" and explaining how to vote using sample ballot papers. The print media also took part in the publication of official announcements. On 30 November 2007, *The Daily Nation* published a list of all parliamentary candidates, over 2000 names on three pages.

On the other hand, we ought to acknowledge the efforts by the print media to shed light on predictions and strategies of various political players in the elections, especially in the Sunday papers and in disapproving certain prevalent practices in Kenya like buying of votes. There were also articles which exposed ineffectiveness of electoral programmes, on the one hand, and their feasibility, on the other.⁵⁶ *The Standard* expressed scepticism on the promise by the opposition to deliver a new constitution after only six months if elected.⁵⁷

The press called for more transparency in the elections and in some daily editions they denounced undemocratic practices by Kenyan politicians. *The Daily Nation* dedicated a pull-out report in its 15 December edition on the buying of votes by parliamentary candidates,

⁵⁵ It is mostly ODM that accused the government of planning election fraud. We were then treated to an "attack-defence" match between ODM and the ECK, mandated to oversee the elections. *The Standard* on 4 December 2007, for example dedicated its headlines and its page 3 to a complaint raised by ODM against ECK: 'Rigging probe. Free and fair?'. The ODM campaign team met S. Kivuitu to complain about fake ballot papers: according to ODM, the 'parallel' ballots were to be printed in Belgium. S. Kivuitu asked to be shown the facts of the these allegations and gave assurances that he is going to carry out investigations for his part. Another attack by ODM: according to the R. Odinga-led party, 188,222 voters were registered more than once on the registers and that 100,000 registered voters were dead. S. Kivuitu defended himself and recalled that 20,000 international observers will be deployed locally.

⁵⁶ *The Standard*, 20 December 2007: 'Fantasy or reality'.

⁵⁷ *The Standard*, 10 December 2007: 'Campaigns are still not issue based or practical'.

after a study carried out by the African Centre for Good Governance.⁵⁸ An article revealed that almost Ksh 900 million was used to bribe voters in the selection of candidates during party nominations. UNDP figures show that rich politicians spent up to Ksh 80,000 per day in buying votes. *The Daily Nation* also claimed that many voters accepted the money but were free to make their own choice at the ballot box. Another short article gave examples of politicians who invested a lot in this practice in 1997 and 2002 and still lost in the elections.⁵⁹

On 18 December *The Standard* criticized the secret use of public funds and resources by ministers during the campaign.⁶⁰ The front pages and three inside pages carried a report by the Kenya National Commission on Human Rights (KNCHR) highlighting seven ministers of the and public service employees in illegitimate use of state resources (money, vehicles, etc) in election campaigns. The article demands a thorough and transparent investigation by the government.⁶¹

Finally, media coverage the 2007 election campaigns was marked by significant opinion polls that were conducted by media groups and well covered by all the media. This is not a new practice but it was the first time pollsters in Kenya, notably Steadman Research, Consumer Insight, Infotrak Harris, Gallup and Strategic Research — conducted the polls with dedication and their results so widely documented.

From September 2007, opinion polls on voter intentions concerning the presidential election was carried out and published in the leading dailies. Soon afterwards they were conducted and announced weekly. *The Daily Nation* showed the greatest interest in the results of the surveys.⁶² Changes in the results of surveys on voter intentions were minimal. R. Odinga systematically took the lead. The distribution of results by province revealed the high popularity of the ODM candidate

⁵⁸ *The Daily Nation*, 15 December 2007: 'Money factor in Parliament race'.

⁵⁹ *The Daily Nation*, 15 December 2007: 'Leaders who invested big cash and lost'.

⁶⁰ *The Standard*, 18 December 2007: 'Behaving badly'.

⁶¹ *The Standard*, 18 December 2007: 'We won't stand for misuse of resources'.

⁶² See the article by Patrick Mutahi on opinion polls, published in this volume.

in Nyanza, Western and North Eastern provinces while M. Kibaki's strength was in the Central Province.

The press a channel of the civil society

Beyond their initial role of informing, *The Daily Nation* and *The Standard* provided a forum for broad political debate in the Kenyan media.

Opinion pages of the leading dailies were full of writings on the principal parties in the elections. Special pages were created specifically for political debate. There was 'Election Platform' in the *The Daily Nation* or the 'The Big Three debate' in the *The Standard*. On one page, and in three separate articles, the leaders or representatives of the three leading parties engaged each other on a particular issue and outlined their agenda. These debate pages, which were published weekly and nearly daily closer to the elections, were reduced to a PNU – ODM battlefield towards the end of the campaign rather than platforms of proposals or explanations.⁶³

Letters to the editor in the two dailies were equally politicized and allowed the public to express themselves on events making news. One page 'The people's voice', carried comments and was frequently read. This was a way for the newspapers to pass on findings and messages. Thus, when Lucy Kibaki increased her allowance as First Lady before the

⁶³ For example, 14 December 2007, in 3 articles published on the page titled 'The Big Three Debate' in *The Standard*, the article of PNU camp written by Muthui Kariuki ('ODM proposals would increase national deficit') strongly criticized the economic propositions of ODM, denouncing as impractical measures such as social protection for the poor and a new constitution in six months. On the ODM, side secretary-general Anyang' Nyong'o wrote an anti-PNU commentary ('PNU should not pass the buck on corruption') which shows that M. Kibaki had lost the fight against corruption. He also said that PNU was planning to steal the election and compared this envisaged act to the 1982 coup d'Etat against D. arap Moi! Only ODM-K desisted from attacking opponents and gave details of its policy: Samuel Poghisis detailed the plans his party had for the Rift Valley, particularly in the agricultural sector.

elections from Kshs 350,000 to Kshs 500,000, *The Standard* published a letter entitled 'First Lady's allowance increase is ridiculous',⁶⁴ revealing the papers' stand on political issues.

The dailies acted more as a mouthpiece of civil society that was deeply involved in the elections. Various activists were featured in the media: the Christian churches, the Law Society of Kenya (notably its chairman Okong'o O'Mogeni) and the Kenya National Commission on Human Rights (led by Maina Kiai). The first two activists were quite conversant with the political debate in Kenya since the struggle for democracy in the late 1980s.

The clergy greatly intervened in the two debates that marked the campaigns: the issue of decentralization fronted by ODM and ODM-K and R. Odinga's agreement with Muslim leaders in a Memorandum of Understanding (MoU). These two elicited a lot of comments in the media. Members of the Clergy expressed themselves from the point of view of the institution they represented rather than their own behalf.

The debate on decentralization monopolized the commentary pages of the dailies from the end of October to early December 2007. Everyone took sides on a vaguely defined proposal (decentralisation? federalism? majimboism?). The Catholic, Anglican, Presbyterian, Methodist and the Episcopal Conference of Kenya registered their disagreement with this proposal, most critical being the Catholic Church, which at this point seemed to be in conflict with ODM.⁶⁵

The second debate, the signing of a Memorandum of Understanding (MoU), after an agreement between the ODM candidate and the National Muslims Leaders Forum: Muslim leaders declared their support for ODM in the campaign while R. Odinga would embark on incorporating the Muslim community in the state, in particular

⁶⁴ *The Sunday Standard*, 2 December 2007: 'First Lady's allowance increase is ridiculous'.

⁶⁵ *The Daily Nation*, 26 October 2007: 'ODM and Catholics clash over majimbo'.

in the public sector employment, and develop the regions that are predominantly Muslim with his policy of decentralization.⁶⁶ This agreement was widely rejected by all the Christian churches (catholic, protestant, evangelical). They intervened through discussion forums in the press, in advertisements or via press conferences. They did not want an accord made in public between a political and a religious group as this raise tension between religious communities, or cause political conflict along religious lines.⁶⁷ The Christian churches know how to communicate with journalists, and their criticisms feature prominently in the media.

Another civil society activist which was active in the media was the Kenya National Commission on Human Rights (KNCHR) together with its chairman Maina Kiai. Despite his frequent appearance in the media M. Kiai had great difficulty in efforts to incorporate human rights into the political agenda of the campaigns. However, on 6 November, his organisation published a tragic report on the discovery of 500 corpses in Kenyan forests (Ngong, Naivasha, Machakos, etc.) The deaths could only have risen from extra-judicial killings, according to M. Kiai. The police were directly blamed in their fight against the Mungiki sect in 2007. M. Kiai spoke of crime against humanity.⁶⁸ Neither the police nor the government gave an explanation to confirm or deny implication in the matter. All the newspapers carried this report on 6 November. *The Daily Nation* went on to demand the truth from the government in an editorial⁶⁹ but the press gave the matter little weight, and completely sidelined a few days later.⁷⁰

⁶⁶ *The Daily Nation*, 28 November 2007: 'Revealed: Raila's real MoU with Muslims'.

⁶⁷ *The Daily Nation*, 20 November 2007: 'ODM pact with Muslims denounced'. *The Daily Nation*, 29 November 2007: 'Now Churches condemn MoU with Muslims'. The Christian churches did not want to lose their political influence to Muslim leaders.

⁶⁸ *The Daily Nation*, 8 November 2007: 'Rights body gives more evidence'.

⁶⁹ *The Daily Nation*, 6 November 2007: 'Bodies : Kenyans want to know the truth'.

⁷⁰ *The Daily Nation*, 9 November 2007: 'High poll stakes lead to in-depth media coverage scrutiny'.

Condemnation of election violence

The final twist in the coverage of the campaign was violence. In November the party grassroots elections were poorly conducted and were characterized by chaotic scenes. As December approached, ethnic tension revived by politicians heightened in the Rift Valley. *The Daily Nation* and *The Standard* then raised moral issues in the wake of an escalating aggression that quickly degenerated from verbal to physical.

In mid-November 2007, the three large political fronts PNU, ODM and ODM-K organized primary elections to pick their flag bearers for parliamentary and civic elections. These elections turned out to be a fiasco:⁷¹ delays due to disorganisation or missing ballots, missing election material, vote-buying, irregularities in the counting and even stealing of ballot boxes were reported in some areas. Violent scenes broke out at party headquarters. For five days the supporters of successful candidates and those of aspirants who felt they had been robbed of victory clashed in Nairobi (Westlands and Dagoretti), in Thika, Mombasa and Mt. Elgon.⁷² Some candidates were injured in the fights. The losers who refused to accept defeat lodged complaints with the ECK while most of them contested in the general elections on tickets of different parties. “*Democracy at its ugliest*” read an article in *The Daily Nation*, pointing an accusing finger at the parties’ incompetence in organising democratic and fair nominations. The daily equally lashed out at the weakness of parties and selfishness of Kenyan politicians who only seemed interested in their own ambitions rather than that of their voters.⁷³

The breakout of violence in the Rift Valley was a new development that the print media condemned and attempted to sensitize the political

⁷¹ *The Daily Nation*, 17 November 2007: ‘Nominations fiasco shame for parties’.

⁷² *The Daily Nation*, 17 November 2007: ‘Confusion and violence mar party nominations’; ‘Chaos mars ODM primaries’.

⁷³ *The Daily Nation*, 18 November 2007: ‘Democracy at its ugliest’.

class about. In Kuresoi, the neighbouring Molo district and Mt.. Elgon, trouble broke out between different communities (Kikuyu, Kalenjin, and Kisii) at the beginning of October. Fuelled by politicians during campaigns in their respective constituencies, they heightened towards the end of November and finally turned fatal in December. On 9th December, 25 deaths were documented in Kuresoi, 16,000 people were displaced and hundreds of houses torched, quite a “price” to pay for “tribal politics”.⁷⁴

These fatal methods by parties were widely condemned in the print media. Even more unforgivable was the lack of action by the state, notably the government and the provincial administration, which stands accused. The lack of action was both past and present, given that the violence were recurrence of 1992 clashes instigated by the KANU government under Moi to discredit multiparty politics.⁷⁵ The police were criticized for their inability and/or lack of goodwill to act in order to stop the crisis.⁷⁶ *The Daily Nation* urged the government to intervene fast and at all costs in Kuresoi and Mount Elgon.⁷⁷

The Standard was again heavy in its criticism of the government over its handling of the crisis, and published scathing opinion articles, as in the *Sunday Standard* of 9 December 2007: “*we are bleeding and dying in Kuresoi; and we are bleeding in the Mount Elgon region. The country burns while the government watches.*” Finally, the Minister for

⁷⁴ *The Sunday Nation*: 9 December 2007: ‘Ethnic clashes. The price of tribal politics’.

⁷⁵ *The Daily Nation*, 5 December 2007: ‘Kuresoi: The State failed the people’.

⁷⁶ The editorial of the *East African* of 10 December 2007, ‘Govt inaction on Kuresoi is criminal’ is clear: “*Nobody disputes that the killings and destruction of property in Kenya’s Kuresoi division are part of the election-related violence sweeping the country. What is worrying is the government has been palpably reluctant to deal decisively with the violence, which is likely to leave thousands of people disfranchised by disrupting voting in nearly 10 polling stations in the constituency. [...] It has been difficult to figure out who to blame, between a seemingly indifferent government deploying ill-equipped and outnumbered security forces, and the local population, whose differences run deep and who have ignored all appeals for calm in favour of setting votes.*”

⁷⁷ *Ibid.*

Internal Security, John Michuki, got round to visiting the affected areas and met the displaced families, but the clashes persisted.

Despite these incidences ahead of the elections, all the newspapers called on the voters to come out in large numbers and vote peacefully. They stressed that voting was the cornerstone of democracy. The 27 December front pages, however, revealed uncertainty in commentaries in light of the atmosphere of Manichaeism and the escalating violence: “*Stay calm and keep the peace*” in *The Nairobi Star*; “*We appeal to you to rely on your inner voice and to preserve harmony and security*” in *The Standard*; “*It’s not a war, it’s only an election*” warned *The Daily Nation*. The dailies were therefore not in doubt regarding the next course of events.

PRO-ACTIVE JOURNALISM BY THE KENYAN MEDIA FOLLOWING ANNOUNCEMENT OF DISPUTED RESULTS

The leading Kenyan media displayed professionalism during the election campaign. They continued to inform after the elections and the announcement of disputed results. They informed the public of developments, sought to understand political and social reasons behind the violence in the country. Cautiously, they broadcasted the clashes that claimed lives of hundreds of Kenyans. They condemned the two conflicting parties and called on the people to stay calm and be united for the good of the country.

This constructive strategy was referred to as “pro-active journalism”, inspired by the media activists. This term describes responsible handling of information by the journalists in conflict situation. Thanks to their presence of mind in urging the public and having a positive impact on the volatile situation by diligently carrying out the duty — through

education, denouncing stereotypes, honest analysis of the causes of conflict, proposing alternatives to violence.⁷⁸

Pro-active journalism by the Kenyan media as witnessed during the crisis is a result of fine training of media players, particularly in the media groups, and in professional unity in situations of crisis – so rare in a highly competitive environment. The re-establishment of the *Media Council* in 2007 was positive. This self-regulation body established to mediate between the government and the press was able to coordinate actions of the profession and defended it against attempts to curtail press freedom by ‘Kibaki II’.

The elections and parliamentary results

Coverage of elections

On the Election Day, 27th December, there was no need to look for something amusing on the radio or a Brazilian *soap opera* on television: every programme was dedicated to the coverage of the elections. The press used their “traditional” network of local correspondents and dispatched reporters throughout the country. Thanks to the mobile phone, they could keep in touch with the broadcasts and in the case of radio, be on air 24 hours. Television stations also carried out the important duty of covering the voting process in the capital and in the rural areas. As they did during the campaign era, *NTV* and *KTN* led in their presence in the country due to their superior technological capacity which made it possible to broadcast live from various polling stations and/or send images with their broadcasts.

Radio and television stations formed a network of reporters and correspondents who kept the listeners and viewers informed the whole day. In the evening, this network functioned in the same manner to report election results live. Due to competition each group made an

⁷⁸ L. Hieber, 2001.

effort to air news promptly and quickly analyse preliminary results. Due to this system, the initial test was passed. R. Odinga's lead over M. Kibaki in the presidential vote was known, many members of the Kibaki government were finding the going tough in their constituencies. The pro-ODM wave in the Rift Valley remained strong despite problems related to the planning of elections and cases of fraud were quickly reported to the public, late opening of some poll stations, names missing from the registers, etc.

The defeat of sitting ministers in parliamentary elections

While waiting for results of the presidential elections, journalists ran a commentary on parliamentarians. The fall of almost twenty members of M. Kibaki's cabinet was seen as a political tsunami. The defeat of Nicholas Biwott and D. arap Moi's sons (Gideon, Jonathan and Raymond) in parliamentary elections marked the end of an era, that one of the old KANU, and the end of a family dynasty.⁷⁹ According to *The Daily Nation*, the Kalenjin vote against Moi's close allies and family was a strong sign of resentment for the former president. Clearly the community did not appreciate his alliance with M. Kibaki. In the meantime a new generation of Kalenjin politicians greatly undermined his political influence over the community.⁸⁰ One *Sunday Nation* commentator could hardly believe that N. Biwott, the 'Total Man' of the Moi era had lost.⁸¹ The fine pen of Mutuma Mathiu, *Managing Editor* of the same Sunday paper amused:

I am excited because of new promises: where will the Kenyan politics be without the least liked of all politicians, Nicholas Biwott? (...) when I started as a journalist, we felt free to criticize

⁷⁹ *The Daily Nation*, 29 December 2007: 'Moi sons lose signalling end of family dynasty'.
The Standard, 28 December 2007: 'Moi sons, Biwott lose to newcomers'.

⁸⁰ *Ibid.*

⁸¹ *The Sunday Nation*, 30 December 2007: 'A bit of drama as giants in politics bites the dust'.

Mr. Moi, but we never joked with M. Biwott.⁸²

Big men close to M. Kibaki were the biggest losers⁸³ of the parliamentary elections: Moody Awori, David Mwiraria, Chris Murungaru, Simeon Nyachae, Njenga Karume etc. and representatives of the “old guard” like outgoing Minister of Information Kagwe Mutahi and his predecessor, Raphael Tuju. *The Sunday Nation’s* point of view on this turn of events was obvious. The 27 December 2007 election was a protest vote by the people against the Kibaki government.⁸⁴

Concerning the presidential election, journalists took great care in calming down emotions and spared no efforts to defend the ECK which delayed in announcing the results.⁸⁵ At end of December, television and radio stations carried out uninterrupted live broadcasts to report popular discontent, relay the statements by politicians, and recount proven cases of fraud and the eruption of widespread violent activities.

Results of the presidential election and violence: condemnation by the media and a call for peace

Activities of the media when the post-election violence broke out and the reflections of the two leading Kenyan dailies between 30 December 2007 and 7 January 2008 will be the focus of this section.

Kibaki II and the first attempts to gag the media

As the troubles broke out in the country due to delayed announcement of results, it was through government backed *KBC* that S. Kivuitu officially declared M. Kibaki winner of the presidential

⁸² *The Sunday Nation*, 30 December 2007, ‘African voters are finding their own voices’.

⁸³ *The Standard*, 28 December 2007: ‘Big winners, big losers’.

⁸⁴ *The Daily Nation*, 29 December 2007: ‘Voters have spoken, let’s all move on’.

⁸⁵ *The Sunday Nation*, 30 December 2007: ‘Announcing election results no laughing matter’.

election on 30 December 2007, three days after the vote. Only *KBC* could run the picture of S. Kivuitu in the precincts of the Kenyatta International Conference Centre (KICC) and all the private television channels and radio stations could only retransmit the public station's signals to broadcast the ECK announcement.⁸⁶

This was a dark day indeed for press freedom in Kenya as the Ministry of Internal Security decided amidst the confusion to suspend live broadcast of all news bulletins in "*the interest of security and public tranquillity*,"⁸⁷ leading to countrywide protests. In a statement, the government spokesman explained that "*in the present atmosphere, some people are using the media to incite violence*,"⁸⁸ any media house found in breach of this regulation would be closed down indefinitely.

This move was widely condemned by media professionals, various civil society bodies and foreign ambassadors. One radio station, *Kiss FM* did not conform and continued to broadcast live news broadcasts and relayed listeners SMS messages. *Radio Lake Victoria* situated in Kisumu, which openly supported R. Odinga, was shut down.

The following day, on 31 December, during a press conference, representatives of the Media Council and Media Owners Association⁸⁹ denounced this measure as "*draconian, unrealistic and amounts to an insult to press freedom in the country*."⁹⁰ The chairman of the Media Council, Wachira Waruru, announced that a decision had been taken by the media owners to ignore the directive not to broadcast live.

⁸⁶ *The Standard*, 31 December 2007: 'Fresh term for Kibaki as ODM reject results'.

⁸⁷ *Reporters sans frontières*, 'A black-out on information decreed by the government', 2 January 2008.

⁸⁸ *Ibid.*

⁸⁹ This comprises the proprietors and directors of publication of the large privately owned media (print media and electronic media).

⁹⁰ *The Standard*, 1 January 2008: 'Media vow to ignore ban on live coverage'. A letter by a reader of the *Daily Nation* published on 3 January ('Media curbs are not justifiable') recalled that if the viewers cannot see pictures on Kenyan televisions they have access to various international channels that cover the post electoral violences like the *CNN*, *BBC*, *Euronews*, *Al Jazeera*, *France 24* and *CCTV*.

His defiance was as weighty as the determination of media players, as pointed out by W. Waruru in his statement:

We, the media owners and the Media Council, have decided today that we are not going to accept any effort by the government to silence us (...) the media industry is shocked by the directive of the Minister in charge of Security. We are not going to obey the slightest directive aimed at controlling the freedom of the press. (...) we hope the minister retracts this directive and allows us to serve the people of Kenya.⁹¹

But the government reaction was categorical, making it clear that the media must comply and the stations had to stop any live broadcasts. The ban remained in place for over a month, until the 4 February 2008. Following this attempt to gag the media, the leading media powerhouses put aside their editorial differences and worked together to effect pro-active journalism, even as violence spread throughout Kenya.

Confusion and restraint

Many deaths were reported during the campaign period (as in Kuresoi), on the Election Day and before the announcement of results, but it is especially after M. Kibaki's acceptance statement that hatred and anger took root in Kenya. The private media portrayed two realities. On the one hand, M. Kibaki, being sworn in solemnly holding the Bible and, on the other hand, ODM leaders contesting his re-election and announcing that R. Odinga was the "*legitimate president*."⁹²

Scenes and images of riots, looting, clashes with the police, displaced people filled newspaper pages, television screens and radio waves. Reporters from the three main media houses were dispatched throughout the country: first to Kibera then to other areas of Nairobi,

⁹¹ *The Standard*, 1 January 2008: 'Media vow to ignore ban on live coverage'.

⁹² *The Daily Nation*, 31 December 2007: 'Violence erupts after Kibaki sworn in'.

Kisumu, Nakuru, Eldoret, Mombasa, Molo, etc. All over the same images, pictures were shown on television and sounds of brutality were broadcast on radios. The reports carried scenes of burning cars or looting (Kisumu was a case in point) sometimes with no commentary (for example on *KTN* and *NTV*).

Almost forty thousand women and children were burned alive in a church in Eldoret on 31 December and this caused an explosive effect on the reports. Days after this tragedy, commentaries in the press continued to compare it to the violence that took place in Rwanda and the Democratic Republic of the Congo.⁹³ Kenya became aware that ethnic tragedies did not only take place in neighbouring countries. A report of *NTV* on 7 January 2008 about Kikuyus fleeing the Rift Valley was incredulously titled, 'Refugees in our own country', violent protests were strongly condemned by the media. There was consternation and confusion everywhere. How did we get here? *The Daily Nation* seemed to ask.⁹⁴

To avoid stoking the fire, the media decided to be impartial over the regularity of the polls. There would be no analysis and limited news on election anomalies would be broadcast. *The Daily Nation* redirected focus on the M. Kibaki's re-election and pointed out that he was starting an illegitimate and "very gloomy" second term "especially in the larger and more populated regions where the perception of a stolen election

⁹³ For example in the editorial of *The Standard* of 2 January 2008 entitled 'Hardened positions will only fuel conflict': "*The nation is bleeding. The people are weeping. We are ominously moving towards the picture of war-ravaged nations such as Somalia and the Democratic Republic of Congo*". Or later on in an article of *The Standard* 8 January 2008 ('Violence undoing economic success'): "*The images broadcast on international television paint the picture of a country at war with itself, drawing comparisons to Rwanda*".

We must add that it is harder for the elite in this country, who considered themselves a model at the level of economic growth and stability for a sub-region spared of civil wars (cf. 'We're on the brink of becoming one of Africa's failed states' of the *Daily Nation* of 3 January 2008).

⁹⁴ *The Daily Nation*, 2 January 2008: 'It is time we returned to our fundamental human values'.

*provoked deep anger*⁹⁵. By 31 December, the paper pointed that it would be impossible to reverse the hand of time and find a procedural explanation of the conflict: only one “political solution” would suffice between M. Kibaki and R. Odinga, but the paper expressed doubt that the ODM would be able to calm its supporters.⁹⁶

In order to stay abreast with the irregularities, the newspapers chose to relate conclusions of the European Union observers and various foreign representatives, who unanimously condemned the elections as “*seriously flawed*”.⁹⁷ Findings such as “*serious problems in the vote-counting process*”⁹⁸ with inflated figures in certain constituencies (Maragwa, Molo) were provided by the European Union and were published providing their source.

Thus, from reading the Kenyan papers of Anglo-Saxon origin and which separate fact and analysis, it is easy to see the subtle line between factual articles pointing clearly to an election that has suffered numerous irregularities in the vote counting process⁹⁹ — with various reports accusing observers of tampering with official figures but also

⁹⁵ *The Daily Nation*, 31 December 2007: ‘President embarks on second term with tarnished mandate’.

⁹⁶ *Ibid.*

⁹⁷ *The Daily Nation*, 1 January 2008: ‘Western nations declare poll gravely flawed’.

⁹⁸ *Ibid.*

⁹⁹ For example in *The Standard* of 1 January 2008: (‘Death, chaos as ECK chiefs break ranks over results’): “*The United States and Canada, in separate statements, also expressed concerns over the serious problems experienced during vote-counting. The Kenya Elections Domestic Observers Forum (Kedof) said: “In our view, considering the entire electoral process, the 2007 general election was credible in as far as the voting process is concerned. The electoral process lost credibility towards the end with regard to the tallying and announcement of presidential results”.*

commentaries in the foreign media replicated as 'news'¹⁰⁰ — and opinion articles which for the sake of quelling ethnic tensions, preferred to remain non partisan but shift the blame of post election chaos to the two leading parties and the ECK.

Pro-active journalism

The Rwandan ghost and its 'hate press' haunted Kenyan journalists. This called for professional unity and an appeal for calm remained their message in the wake of escalating violence.

On 3 January, the media made a decision to act jointly. The Kenyan newspapers agreed on one headline: '*Save Our Beloved Country*'. The televisions carried the message '*Save Our Country*' at the base of the screen throughout the day. The radios read editorials of *The Standard* and the *Daily Nation*, and used their influence on listeners to appeal for individual responsibility. On 6 January, three days after this measure, television and radio stations put on air a common programme of prayer for peace. The initiative came from the Media Council, and the Media Owners Association and religious leaders. From 6 to 7 am, pastors, priests, imams and artistes consecutively appeared to deliver messages of peace and to demand truth and justice on elections. Still in the interest of promoting pro-active journalism at a time of conflict, *NTV* ran a series of special programmes from 3 January 2008 entitled '*Saving Kenya: Voices of Reason*', which aimed at demystifying the evolution of conflict. The NMG television channel also broadcast a five minute clip on peace, '*A Song for Peace*', at regular intervals.

¹⁰⁰ A technique of a kenyan journalist of taking sides without doing so is to quote the foreign press, essentially English media, with regard to the election. Thus in a 'news' article of *Daily Nation*, the story reads "London's *Daily Telegraph* newspaper says the handling of the election was a blow to Kenya's reputation as "one of the continent's most stable and open democracies." UK's *Observer* newspaper suggests that the delay in announcing the election result was deliberate, designed to help Mr Kibaki's party manipulate the outcome. *The Guardian* said that many international observers had "refused to declare the election free and fair." *The Times* said the whole democratic process in Kenya was now at stake" (1 January 2008: 'Western nations declare poll gravely flawed').

The print media continued in its informing role. It is in *The Standard* that we learnt that S. Kivuitu announced results under pressure and that he himself could not tell the real winner of the elections.¹⁰¹ The two leading papers acted jointly to bring about a sense of morality among politicians and readers and encourage negotiations between the two conflicting political parties. The array of titles of their editorials following the announcement of election results is a clear indication of these efforts: 'Our leaders must now preach peace' (*The Daily Nation*, 31 December); 'Our leaders must make peace happen' (*The Daily Nation*, 4 January); 'Peace talks crucial to nation's survival' (*The Daily Nation*, 9 January); 'We must stop these poll chaos right away' (*The Standard*, 30 December); 'Violence does not help in this crisis' (*The Standard*, 1 January); "Hardened positions will only fuel conflict" (*The Standard*, 2 January); 'Let us join all join for the push for peace' (*The Standard*, 4 January); 'Let us all support mediation efforts' (*The Standard*, 7 January). The first person's plural (*we, our, us*) is used as source of empathy and persuasion to the reader.

A triple condemnation

In the wake of increasing post electoral violence, journalists accused neither camp in particular but laid blanket blame on both PNU and ODM who played an instrumental role in ethnicizing the campaigns,¹⁰²

¹⁰¹ *The Standard*, 2 January 2008: 'I acted under pressure, says Kivuitu'.

¹⁰² According to an opinion article in the weekly *The EastAfrican*: "This fight to get a larger slice of the "cake" has been growing in divisiveness and hateful rhetoric. [...] Kenyans for the past few years have worn tribal lens when looking at the political landscape. In this decoding by many of my fellow Gikuyu, ODM is perceived as an existential foe, not just an electoral one. To be anti-Kibaki, or at least opposed to him, as was the case with the majority of the country's provinces and at least 45 per cent of the voters, was going to be regarded by many Party of National Unity supporters, particularly those from the Mount Kenya communities, as inimical to their existence and survival as a collective. A similar sense of drastic opposition applied to many ODM supporters. The stage was set for the violence seen across the country during the past week". *The EastAfrican*, 7 January 2007: 'Ethnic strife: How Kenya's politics was tribalised'.

while the ECK and its chairman S. Kivuitu continuously accused the profession of acting unanimously against them.¹⁰³

Media political analysts viewed the ODM campaign of “them-against-us” as highly incriminating. This accusation played a principal role in whipping up anti-Central Province and simply anti-Kikuyu sentiments in some communities and fuelling ancient frustrations. This political ethnicization had dire repercussions when it was apparent that the ‘Kikuyu party’ had stolen the election. The second accusation coming rather late was that R. Odinga showed no goodwill to end the crisis and contain the violence. M. Kibaki was accused of playing the waiting game only making half-hearted attempts to quell the demonstrations. Turning to PNU and the ethnic issue, columnists drew a clear distinction between the Kikuyu as a people and the elite Kikuyu. The latter is accused of sacrificing everything to stay in power, driven by the fear of losing control of a ‘golden economic era’ should the ODM come to power. According to *the Sunday Nation*:

The crisis in Kenya is not electoral in itself. It is a result of how this election has been presented, and it has been presented as a conflict between the Kikuyu — accused of stealing the country’s fortunes and monopolizing power — and a coalition of other tribes. The ODM alliance appears incapable of convincing the elite Kikuyu that Raila’s presidency will not signify their end, as they thought. The Kikuyu thought that if ODM wins the tribe will be destroyed, they will be dispossessed of their property and those who have settled in various parts of the country will be decimated.¹⁰⁴

The last collective accusation was against S. Kivuitu and the ECK over its work and especially the conduct of elections after the announcement of the presidential results. S Kivuitu’s work, which had been considered “*efficient and independent*”¹⁰⁵ on the 28 December

¹⁰³ *The Daily Nation*, 7 January 2007: ‘ECK cannot escape blame for post-election violence’.

¹⁰⁴ *The Sunday Nation*, 6 January 2007: ‘Sweet Jesus, give me tears to cry for my country’.

¹⁰⁵ *The Daily Nation*, 28 December 2007: ‘It’s job well done despite challenges’.

2007 turned “disastrous” a week later.¹⁰⁶ The electoral commission which declared M. Kibaki winner is held directly responsible by the print media. Its members did little to resist pressure or manipulation; they hurried to make a proclamation of an election marred by irregularities, what a legislative mess.¹⁰⁷ An unwavering opinion article read ‘Why Kivuitu must be held accountable for poll chaos’. According to the article, the announcement of M. Kibaki as winner was unconstitutional.¹⁰⁸ Finally, *The East African* editorial on 7 January 2008 considers that the ECK lost all credibility in this election. The weekly carried statements by S. Kivuitu and other ECK commissioners, who failed to challenge the irregularities. They confirmed being under pressure from the authorities, worse still they could not tell who won the elections.¹⁰⁹ And the final editorial pushed for a case to reconstitute the electoral commission. It would be suicidal to go into another election with the same commissioners and the same arrangements. Only Gado, a cartoonist with the *Daily Nation*, seems a little considerate with the ECK: a drawing on the 3 January 2007 depicted S. Kivuitu announcing the presidential results with a Kalachnikov pointed to his neck by a soldier.

A new debate

The issue of the coverage of the 2007 elections has become a real debate in the media industry. Confronted for the first time with sudden violence, domestic conflict and also shocked by the brutality of the police and the exactions of the population, newsrooms were frightened

¹⁰⁶ “A disastrous performance and conflicting information from its chairman, Mr Samuel Mutua Kivuitu”, in *The Sunday Nation*, 6 January 2008: ‘ECK could go to court soon’.

¹⁰⁷ Read the article by Anne Cussac, ‘Institutional shortfalls...’ in this volume.

¹⁰⁸ *The Daily Nation*, 5 January 2007: ‘Why Kivuitu must be held accountable for poll chaos’.

¹⁰⁹ *The East African*, 7 January 2008: ‘ECK has lost all moral authority’.

of fuelling the tensions. They clearly chose to censor themselves in the treatment of the flawed vote. They didn't report certain news items. They didn't investigate much about the truth of the ballot boxes (who cheated? Who really won the election?) in order not to feed hatred and division. During the entire month of January 2008, they preferred to condemn all the politicians, to urge peace, to support the end of the crisis, to encourage efforts of negotiation.

A few months after the violent events, in retrospect, directors and managing editors of the main media houses had the feeling they had failed in their duty of disseminating information. Some of them regretted having taken up such a position, for not having played their historic and claimed role of democratic watchdog. Indeed, preaching is not the primary job of the journalist... it is rather to supply information and to search for the truth. Others, like David Makali, director of the Media Institute, spoke of the "failure of the Kenyan media", arguing there was too much self-censorship in the newsrooms, adding that the media didn't defy the live broadcasting ban¹¹⁰. D. Makali thought journalists did not report the facts because they were scared the violence may turn against them, either from the government or the general population. Furthermore editors and owners had come under great pressure.

Self-censorship arising from numerous fears and the will to act for peace led the Kenyan media to cover the post-electoral chaos in a pro-active manner, that replied to a complex situation of domestic conflict.

Conclusion

In general, the study of the coverage of the campaign, the election

¹¹⁰ David Makali, quoted from Reporters Without Borders, International Media Support, Article 19, "How far to go? Kenya's media in the turmoil of a failed election", March 2008, p. 8.

itself and the post-election chaos by the Kenyan media, specifically by the two leading dailies *The Daily Nation* and *The Standard* presented journalism with a double role; that of passing on information to the citizen and at the same time condemning the ever worsening misconduct of politicians. It brought to light the politicization of media players and their awareness that they can have a great impact on the political and social arena. By repeatedly appealing for calm, the leading media transformed themselves into ambassadors of the national interest and the national unity, wanting to play an important role meant for peace and for opposition to politics.

We can also point out that the professional unity after 30 December 2007 and unity of purpose in practising pro-active journalism represented a new chapter in this strongly contested environment for the future. Finally, by launching the new Media Council, through the voice of W. Waruru, who was unanimously recognized as a reputable media icon, the profession in a way found the self-regulation that had eluded it for long... and this goes down as one of the rare positive points in Kenya following the 2007 general elections.

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THE ELECTORAL CAMPAIGN ON TELEVISION:

Communication strategies and models of democracy

*Florence Brisset-Foucault**

Since the 2002 alternation, the audiovisual sector in Kenya experienced an impressive expansion resulting from political liberalization and economic growth. The vitality of publicity and the presence of a vibrant middle class gave the Kenyan media sector a specific status on the continent. Television viewers had eight local channels at their disposal, which ran a mixture of English and Swahili programmes, a regional station based in Tanzania (East Africa TV, which is largely music-based), cable and satellite TV, as well as American and British (CNN, BBC) news broadcasts. The two stations attracting the largest audiences are Nation TV (NTV) and Kenya Television Network (KTN).¹ These are followed by Kenya Broadcasting Corporation (KBC, the public network) and Citizen TV, owned by Samuel Macharia, a close friend of Mwai Kibaki.²

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¹ NTV is owned by Nation Media Group, whose majority owner is the AgaKhan while KTN of the Standard Group is three-thirds owned by Daniel arap Moi's family.

² The figures on the number of Kenyans who own a television set varies according to the various sources as no nationwide survey has been carried out on this subject. However, in order to give an idea of the size, it is useful to indicate that it oscillates between 17% and 32%. One must take into account the fact that even if many Kenyans do not own a set, they watch TV in public places, particularly in bars. See Africa Media Development Initiative, BBC for figures: http://downloads.bbc.co.uk/worldservice/trust/pdf/AMDI/kenya/amdi_kenya6_television.pdf.

The 2007 electoral campaign was held under tense conditions. There was some violence, and generally, fears concerning the reaction of the defeated candidate punctuated public debate with increasing anxiety. In other respects, in their mobilization speeches, some candidates resorted to an ethnic tone. Despite all this, through television broadcasts, the campaign could appear to be a model, feeding the image of “the continent’s window into democracy”, that liked to highlight Kenyans and the idea of “normalcy” or of a “democratic routine” of a country in alternation.

The weeks before the elections experienced exponential growth in political programming on both TV and radio, with the setting up of political analysis editorial meetings, daily reports of the different political meetings on news programmes (almost completely focusing on the campaigns) and an impressive mobilization of news features, particularly on voting day with the deployment of a network of correspondents in all voting stations throughout the country.

The season also came with a flurry of political shows interviewing Kenyan citizens by telephone, text messages (SMS)³, and also directly in the studios. These broadcasts, having attained growing visibility on Kenyan television, especially since the constitutional referendum of 2005, acquired a legitimate dimension. Bearing witness to this are the resultant polemics on the holding of a live debate between the three main presidential candidates. A show titled ‘The Grand Rumble’ was to be broadcast by the private channel KTN, in partnership with BBC on 12 December, Jamhuri Day. Raila Odinga declared his willingness to participate and in a press conference held on 10 December, he publicly challenged Mwai Kibaki to participate. The latter has traditionally been rather reticent in the media. Due to the media’s growing influence, different strategies emerged within Kenyan politics—Raila Odinga

³ Counted and presented as graphic opinion polls at the end of each programme.

attempted to subvert the structure by imposing new rules of political communication. He persisted in a credible argument, presenting the outgoing president as belonging to a bygone political era, considering that M. Kibaki did not want to submit to a “public examination”.⁴ Eventually, Raila also declined the invitation to the debate, saying that it would not be worthwhile to only face Kalonzo Musyoka, the “third man” in the election. In the end, the debate was cancelled.

Despite the 2007 election having displayed an impressive use of political communication strategies,⁵ one must reckon with difficult trends which have existed since 2002, with the major stage being the referendum campaign of 2005. This latter experienced a mobilisation of media owners, who organised two editions of an interactive talk-show aimed at clarifying the stakes of the constitutional reform. This show, *The Big Debate*, produced by the Media Owners Association (MOA), was simultaneously broadcast on all Kenyan TV channels. It was a means for journalist to publicly display their impartiality in a situation where they had been heavily criticized.⁶ The talk-show was also an important precedent in the structuring of a political communication sphere and the expertise of certain journalists (Julie Gichuru, Louis Otieno, Wachira Waruru...) in the production and presentation of this type of broadcast.

⁴ “The Elusive Live Debate”, *The Standard*, 11 December 2007.

⁵ According to the *Washington Post*, the campaign expenses of the two main parties varied between 6 to 10 million US dollars. See Stephanie McCrummen, « Kenya Tests New Style of Politicking », *Washington Post*, 22 December 2007. In comparison, in France, the campaign of the Socialist Party (PS) or the Union for a Popular Movement (UMP) in 2007 cost each of the two parties about 20 million euros. Nevertheless, there is some vagueness concerning the funding of political parties and campaigns in Kenya, and some of the funds are personally raised by the candidates, bypassing their political party. For more on this, see the inquiry by Coalition for Accountable Political Financing, <http://capf.or.ke/default.asp>.

⁶ This was initially a failure as the first show was presented by Rose Kimotho, the owner of Radio Kameme, suspected to be a close ally of M. Kibaki and “pro-banana”. After this, the producers decided to leave the presentation of the *Big Debate* to L. Otieno and J. Gichuru.

Three shows will be discussed in detail here—*Debate 07*, screened on KTN, *Agenda Kenya* on NTV, and Citizen TV's *Louis Otieno Live on the Road*. These shows were viewed from the studios of the TV stations during fieldwork carried out in December 2007, in the four weeks preceding the elections. The programmes were chosen due to their popularity and were aired at peak hours, thus capturing large audiences. The three also had different profiles, with two shows being sponsored by characteristically different NGOs. *Louis Otieno...* was sponsored by a Dutch foundation, Media Focus on Africa while *Agenda Kenya* was funded by Medeva, a Kenyan NGO. *Debate 07* was aired during the campaign period while *Louis Otieno...* was a mobile show, going across the eight provinces of Kenya. These were weekly programmes, lasting between 40 to 90 minutes. They were mostly in English, but contributions in Kiswahili also abounded. The shows were built around four or five guest speakers in a forum, before a public of 15 to 150 persons, depending on the show. A moderator led the discussions.

The viewing of these shows led to an interrogation of the political models presented and promoted on Kenyan TV. Which of these would fade away to different citizenship, leadership and national community models? How would the limits of what would be termed unspeakable be defined in the public arena? Before an analysis of these models, one must consider the most autonomous sphere of political communication in Kenya, encompassing journalists, politicians, academics, NGOs and international donors. Indeed, these broadcasts were the result of a voluntary collaboration between these different actors, all involved in the electoral campaign. The idea was then to submit these models to discussions and to public profiles in order to position and analyse the ideal of citizenship projected in these shows.

POLITICAL COMMUNICATION IN KENYA: PROFESSIONALISATION, EXTROVERSION AND AUTONOMY

The 'field' according to Bourdieu supposes a much more precise limitation than what currently characterises political communication in Kenya. However, it is a useful notion as it allows an understanding of the dynamics of how reproduction stakes and autonomy are created in related fields: academic, journalistic, political and development.⁷ The idea is therefore to show how a professional and political communication sector is structured in Kenya. What position does it take and what are the strength relationships within it? How does each of these actors attempt to preserve their autonomy or to dominate the others in order to pursue their own economic interests and to impose a specific interpretation of the political situation?⁸

The spread of international models and donor involvement

Extroversion plays an important role in the accumulation of symbolic and financial capital required for a restructuring of the political communication sector. It allows a spread of media models from the North, circulates funding and personnel, and modifies strength relationships on the ground.

Strong presence of NGOs and international donors

The works of Nicolas Guilhot on the influence of the principal social science foundations are clear on the analysis of relationships between fund donors and the African media. According to N. Guilhot, donors must "*impose principles conforming to specific interests under*

⁷ P. Bourdieu, 1984.

⁸ For an analysis of these dynamics in the French context, see J. Gerstlé, 2004, p. 138.

an objective and universal form"⁹ as universal training principles for the ruling elite. Journalism, with its 'universal' rules of a professional code of ethics and impartiality principles—particularly in election periods—and thus its appearance of 'objectivity' free from ideology, is in this sense a good base for symbolic exportation.

According to Dezalay and Garth, 'structural homology' between the North and the South, and the success of symbolic import-export¹⁰ is visible in Kenya through a meeting of the activities of the high priests of good governance and the values that Kenyan mainstream journalists would like to incarnate within their political space (partisan neutrality, detribalisation and moralisation of political life, denouncing corruption, political and economic liberalism). Furthermore, journalists embody a consensual ideal of democratisation. These factors partly explain the access of the Kenyan media to the NGOs. The meeting between converging economic interests explains the rest.

Some of the most popular talk-shows are sponsored by NGOs that specialise in media production.¹¹ This sponsorship takes several forms: the delivery of a complete TV programme to a station, with the production having been completed by the NGO (the filming is done outside the station, the guest speakers and public chosen by the NGO, the costs covered, and programme moderated not by a journalist but by an employee of the NGO). This was the case with *Agenda Kenya*, produced by Medeva, an NGO agitating for a greater allocation of local programmes in the media schedules. Medeva is headed by two British

⁹ N. Guilhot, 2004.

¹⁰ Y. Dezalay and B. Garth, 2002.

¹¹ Only two examples will be given here. However, it should be noted that the Centre for Multiparty Democracy (CMD) also sponsored broadcasts on the state-owned station, KBC, and that the Republican Institute sought to sponsor programmes in partnership with the Media Owners Association. The former is part of National Endowment for Democracy (NED), and its office is headed by John McCain, Republican presidential candidate in the USA.

former journalists of the BBC. It is funded by the Ford Foundation, the Open Society Institute, the German Cooperation and also receives funds from advertising.

The second option is what can be referred to as 'vampirisation' of a pre-existing broadcast, generally one that had high popularity. This is true for *Louis Otieno Live*, sponsored between October and December by the Dutch Foundation Media Focus on Africa, mostly from the UNDP 'elections' fund. Media Focus paid Citizen TV Ksh 1 million (€ 10 000) per broadcast, to cover the costs of production, and used the programme as a tool for civic education. The NGO also modified some formal aspects of the programme. This sponsorship actually made it possible for *Louis Otieno Live* to go on the road to eight Kenyan provinces, with local residents and civil society protagonists as the studio audience and forum speakers. This case in particular caused conflict between the NGO and the journalists who wanted to maintain a level of editorial autonomy.

Several issues should be emphasized in an analysis of sponsored television broadcasts. If it is to be captured in a global dependence framework, the example of the Kenyan media demands that to a certain extent, the idea of unilateral dependence and an understanding of the unequal strength between donors from the North and the African media, be put into perspective, particularly in an electoral period. Indeed, for an NGO like Media Focus, at this particular moment all stakes were to position itself as an undeniable actor in the political debate, with influence on defining the discussions and the agenda. This immediately justified the monies it received from UNDP and from their other donors but equally conferred some credibility on the media and experts that they sought to attract. The organisation had to position itself in a competitive electoral education field. Some journalists have understood this very well as they play off this competitiveness and

dependence on NGOs.¹² In the electoral context, the market becomes more competitive as new actors emerge and as special funds are released by donors. One must also take into account the good economic health of the media in Kenya¹³ (this differs from other African countries where the media can develop a great dependence on financial donors). These NGOs, whose success in creating projects is partially based on the inequalities of power relationships with local actors, find themselves in a more difficult position in Kenya than elsewhere on the continent.

This loss of editorial autonomy resulting from fully-loaded programmes produced externally, if true, must furthermore be routinely replaced in the African audiovisual sector, which imports a huge amount of foreign programmes (from South American soap operas to German cultural broadcasts, BBC and VOA newswatches...). Moreover, in the British audiovisual scene, more so in the French journalistic tradition, TV and radio programmes are often produced commercially, and then bought by the stations. A case in point is *Question Time* on the BBC, produced by Mentorn, from which *Agenda Kenya* drew inspiration. This context explains the autonomy given to Medeva by NTV.

Despite this, a form of dependence exists: the Kenyan media seek scheduling and local programming.¹⁴ They also need editorial innovation which allows them to remain competitive although they may not necessarily have the means. These types of broadcast define the identity of the station, place the media as undeniable actors in the political debate and allow them to put forward an 'impartiality'—this

¹² To the point that some media have refused sponsorship offers, to the benefit of others.

¹³ In 2006, the Nation Media Group's annual turnover had increased by 13% as compared to the previous year and attained Ksh 6.3 billion. The pre-tax profit reached Ksh 1.2 billion. See

http://www.nationmedia.com/corporate/images/Nation_Annual_Report.pdf. As a point of comparison, the French newspaper *Libération* had a turnover of 72.5 million Euros in 2003 (although one must also compare the rates of profit and debt).

¹⁴ A TV station claiming to be '100% Kenyan', K24, was launched this year.

is key in a station like Citizen, whose covering of the campaign was highly favourable to the outgoing president. Turning to NGOs to fund this type of 'product' represents an important choice in terms of image and autonomy, since this allows them to be independent of patronage from politicians and large commercial enterprises¹⁵. The struggle for editorial autonomy led by some journalists against these donors must be taken into account following a broader analysis on issues of management and dependence. The idea for these actors is to attract donors from the North while demonstrating a need and affirming their autonomy at the same time.

The contract between Media Focus and Citizen TV was based on a 'shared editorial control' clause. The sharing of tasks was thus carried out from day to day between the two organizations, which created conflict between the donor and the station until the contract was ended.¹⁶ Media Focus, in accordance with its objectives and those of the UNDP, sought to put forward some values (partisan equilibrium, room for consultants) and certain themes (leadership, corruption, youth, gender), through pre-defined topics and guests. This interference was not appreciated by some journalists at Citizen, who went on to question the relevance of the choices made by Media Focus.¹⁷ The disagreements were mainly on the amount of time to allot debates in the different places visited. Faced with an NGO that had predefined certain themes (gender, youth etc.), the journalists wanted subjects that were appropriate to the local

¹⁵ The dependence choices are further contrasted: journalists of the radio programme *Crossfire* preferred to be sponsored by the mobile telephone company Celtel than by an NGO, considering that the former allowed them editorial autonomy.

¹⁶ The last edition of *Louis Otieno Live on the Road* was not sponsored by Media Focus.

¹⁷ This sponsorship was seen by some journalists as an interference in a show that was popular before the arrival of sponsors within a team that had been created several months earlier. This explains the difference with *Agenda Kenya*, which had not held this type of debate since the editorial work was more separated between the NGO and the station. The fact that Media Focus is an NGO of the North could have added to the malaise by incorporating dependence relationships. The relationship between Medeva and NTV was stated as a 'business' one rather than a 'development' one.

needs, while giving each debate the value of national representation. As explained by a journalist from Citizen TV:

Sometimes we are asked to do these things... 'Go to Embu and talk about women's problems' ... That never works! In Nyeri they would like us to speak only about the youth... You know, you can never go there and say that you would like to focus on the youth and politics... Then, we have to change some aspects. (...) In the first place, this programme has never been done before in the country. People want to talk; they want to say what their problems are. You can't go to a place and tell them 'This is what we would like you to talk about'. Then the people will tell you: 'We also have problems concerning A, B, C, D...' You cannot go to an area where there is no show, where you can say: 'Ok, today, we were in Nyeri, where we spoke to the youth, yesterday we spoke about women so today, we will talk about schoolteachers, tomorrow we will talk about farmers!'¹⁸

There were other conflicts that occurred, on the issue of invited speakers. An example is when the NGO invited Maina Kiai, chairman of the Kenya Human Rights Commission, particularly visible during the electoral campaign and highly critical of the Kibaki administration. The station was opposed to this, officially giving the reason that he was not on the list of expected speakers.¹⁹ In order to negotiate their editorial autonomy, the journalists fell back on the excuse of poor knowledge of the field and the expectations of Kenya viewers and on the argument of Media Focus' uselessness, as a 'go-between' or 'facilitator'. The journalists sometimes went as far as to directly consult with UNDP.

However, some teams, such as that of *Debate 07* on KTN, explicitly refused sponsorship despite offers that came their way. In the same manner, Hannington Gaya, the director of the Media Owners Association, refused to organise joint shows on all TV stations as had been the case in 2005 campaign:

¹⁸ Interview with a journalist from Citizen TV, Nairobi, 24 December 2007.

¹⁹ This example also suggests the influence of political pressure or self-censorship in the format of the talk-shows.

This time around, I was very uneasy (...), I did not have the impression that it would be honest because some sponsoring bodies imposed rules: 'We would like this person to emcee the debate; we would like him to be like this...' (...) For example, the Republican Institute wanted only economic issues to be raised. For me, this meant that they wanted a pro-Kibaki campaign... Or: 'we would like so-and-so and so-and-so in the forum...' (...) They wanted to invite CEOs to ask the questions (...) gave me names of people to put in the forum.²⁰

Spread and development of Western media models

The Kenyan media are often influenced by Anglo-Saxon journalism models,²¹ at the level of separation between the 'facts' and the 'commentaries', the format of the shows, the daily news, and even jingles. The one of Citizen TV (*This is Citizen...*) immediately draws images of CNN (*This is CNN...*)... According to their designers, all political shows are inspired by British or American programmes. Examples are *Debate 07* and *Agenda Kenya*. This former is the home-grown reply to the BBC's famous *Question Time*, which has been in existence since 1974 and practically became an institution in Great Britain. *Debate 07* was created in September 2007 during the campaign period. It was presented by Linus Kaikai, a star presenter who aimed to reproduce the model of American electoral debates—initiated in the 1960s with the famous Nixon-Kennedy debate—which was not possible due to Kibaki's refusal to participate. Kaikai says that he is today inspired by the debates launched by CNN in partnership with Youtube.

It is worth noting that several presenters considering this type of debate as new in Kenya, claimed to be the source of this innovation,

²⁰ Interview with Hannington Gaya, 19 December 2007.

²¹ For more on the issues of spread and reappropriation of French and Anglo-Saxon models of journalism in Africa, see the works of B. Rambaud (forthcoming).

giving it an avant-garde role.²² More interestingly, it can be seen that in the journalists' discussions, justification of this importation operates under the title of 'democratic normalcy': Kenya, 'a new democracy' opens up to media forms and 'models' of democratic governance already in vogue in countries of the North. The challenge is thus on the image of Kenya and of Africa, that these journalists seek to portray. These broadcasts are in fact writings on the electoral campaign and the transition, an attempt to project an image of Kenya that is a 'democratic window' of Africa (in a sort of nationalist enterprise), or an Africa where democracy is 'normalised'.²³ For the journalists, it was a chance to display their 'professionalism' and their public political power, to Kenyan politics and at international level. The fascination for the American media and more so during the elections (a reinforced effect by the parallel electoral agenda between the two countries), results from the feeling that the media 'make' the election, especially through the contradictory debates between the candidates.²⁴

Also to be examined are the importation phenomena through the careers of the journalists. The 'importers' are actually deeply integrated in the media sphere, which occupies a dominant position in the field. With a strongly international reach (as seen in the studies done or by the awarding of prizes such as the BBC Africa Award etc.), they

²² This was not always true... Interview with L. Kaikai, Nairobi, 19 December 2007, interview with L. Otieno, Nairobi, 24 December 2007.

²³ This statement of normalcy, of Kenya as a 'model' or 'exception' on the continent, has been highly present in the media since 2002. It was again displayed during the January 2008 crisis, in the expressions of surprise incomprehension shown by the journalists. For an analysis of media coverage of the crisis, see the article by B. Rambaud in this issue.

²⁴ The adaptation of these models to the Kenyan context and their eventual modification by the protagonists demands a comparative study treated with the American or British shows which inspired them. According to the journalists interviewed, the modifications are essentially technical and are independent of their wish (for example the presidential debate which did not happen and would have had to be transformed into individualised auditions of K. Musoyka and R. Odinga). It will be rather interesting to see if such a problem of ethnic representation exists in the public arena in Great Britain and in the United States.

represent a model of success and of professional legitimacy. The prizes are especially valuable, if they are considered from the extroversion point of view of Jean-François Bayart,²⁵ since they are reinvested in a particularly profitable manner within the country.

Finally, the remarkable presence of Western experts or 'White wizards' as expressed by Vincent Hugué,²⁶ must be noted. Among these is the famous Dick Morris, former campaign manager and close ally of Bill Clinton, who 'offered' his services to R. Odinga.²⁷ Three weeks before the election, M. Kibaki also deferred to a foreign consultant, Marcus Courage, a Briton who had previously worked for him in 2002.²⁸

The Kenyan arena and political communication: professionalism and overlapping

Consultants

Despite the highly visible side of these foreign '*spin doctors*', there is an establishment of indigenous sector of political consultants with a growing recourse to journalists, NGOs, politicians and experts, so that a

²⁵ "Extroversion consists of embracing foreign cultural elements by submitting them to local objectives" (J.-F. Bayart, 1997, p. 80).

²⁶ This phenomenon is also present in francophone Africa and is described by Hugué in his book. The profile of the consultants and the conditions in which they are employed by African leaders seem to be different in anglophone Africa. See Vincent Hugué (2007), for a comparison.

²⁷ Bill Clinton's campaign manager in 1996, he resigned two months before the election after a scandal involving a prostitute. Since then, he has been an editorial writer, a consultant and often appears in talk-shows in the US. During the Kenyan campaign, Morris was expelled from the country on the grounds that he did not have a work permit, but he continued to work for ODM from the States (*Nairobi Star*, 8 December 2007). Raila Odinga and Morris maintained that they did not have a commercial arrangement and that the American had offered his services for free.

²⁸ Courage is a marketer who heads an enterprise called Africa Practice. It encourages the IDE and political communication of international organisations in Africa. He also worked for the campaign of the new Nigerian president, Umaru Yar'Adua.

programme or communication strategy can be designed for a candidate or party; to design campaign priorities for the campaign of an NGO, provide them with figures and analyses; or even to appear in the political shows as experts. A good illustration of the structure of a professional sector of experts during the campaign period remains the think tank, '*Kibaki Tekelezi*' (Kibaki must complete the work),²⁹ partly constituted of Kenyan academics, which defined communication messages and strategies for M. Kibaki. These academics thus had a direct influence on the form that political shows on television would take, be in their own performance or through the advice in communication that they provided to the politicians and to journalists.

This convergence with the political élite, collaboration with the NGO world and this visibility of university dons in the media reflects a specific strategy. Indeed, it allowed some dons to acquire celebrity status and to emphasise their intellectual authority, to spread ideas, justify a social usefulness, or simply to emerge from economic precariousness and thus rationalize an academic vocation. Inequalities in the world academic scene, difficult work conditions and very low salaries enticed several African academics to resort to consultancy, and not merely to propagate their ideas.

Although the example of these experts shows the interlocking between different fields, the specialisation of some actors in this sort of activity and their growing professionalism (creation of small consultancy companies, using most of their work hours doing this due to their lucrative nature) equally goes into autonomisation and harmonisation of professional practices linked to political communication and an indifference from the actors of the Academy. In this sense, their appearance in talk-shows as experts is used as a means to demonstrate their knowledge, their value and acquire visibility with the aim of being employed by politicians. At this level, rather than demonstrations of

²⁹ <http://www.taifatekelezi.com/>.

loyalty, it is value-added impartiality that seems of greater impact in the consultant market. It allows them to keep their options open and to reinforce the argument of their authority and credibility, which is highly sought after by the politicians.³⁰

Whereas the phenomenon of Kenyan spin doctors demands a more profound sociological analysis, two phenomena seemed interesting in relation to the profile of those that were interviewed—studies or foreign academic sojourns, long-term political vocation (this also shows the intermingling of politics/academic at the career level).

Another trend is the increase in the use of social sciences by politicians, through the use of various forms of expertise, notably demographics, in the constituencies. Finally, the 'direct' use of researchers in the campaign trail, in relaying local opinion is quite fashionable. For the politicians, intellectual authority of the dons, their status as 'national' figures due to their repeated appearance on TV, are good tools as they bring credibility to the programme and to the candidate.

Strategies of political communication

Beyond the recruitment of experts, political parties and candidates used several other communication tools during the campaign period.³¹ This was particularly the case for ODM, which had to compensate

³⁰ To give an idea of the rates in this profession, a consultant confirmed that he demands Ksh 100 000 (1000 euros) for communication advice and developing parliamentary campaign messages in Nairobi and about Ksh 8000 (80 euros) for an advice session with a civic election candidate.

³¹ It should be specified that a recourse to vote-buying had greatly developed. According to the Coalition for Accountable Political Financing, a regrouping of NGOs financed by the USAID. An average of Ksh 5 million was distributed to constituencies during the party nominations held in 2007. The NGO comprises Transparency International and the Center for Multiparty Democracy among others. The survey also revealed that 38% of the candidates' campaign budget was set aside for vote-buying (<http://capf.or.ke/default.asp>).

the shortcomings of their mobilisation by PNU, of resources and public spaces (posters on public buildings etc.). It is in the media that ODM was seen and could benefit from equal airtime and speech in comparison to the presidential camp.

There was also the habitual use of posters, newspaper advertisements and even the use of cartoons. In 2007, there was also a flourishing use of SMS and spam (already having been used widely in 2002 and 2005) and additionally, calls on personal telephones: upon answering, the voter would find either R. Odinga or M. Kibaki on the other end. In reality, this was a voice recording of the candidate stating his campaign promises.³²

Some politicians also capitalised on the corruption of journalists.³³ The government media, KBC and also those close to the authorities, for example Citizen TV, were placed under the influence of PNU, thus slanting the format of talk-shows, especially in the choice of invited guests. In 2005, the first edition of *The Big Debate*³⁴ was harshly criticised by several observers: presented by Rose Kimotho, director of Radio Kameme and an ally of M. Kibaki, she was clearly in the pro-Banana camp. In 2007, during the talk-shows broadcast by private stations, pressure from the government was less visible. Nevertheless, the difficulties experienced by M. Kiai in appearing on the guest forum of *Louis Otieno Live...* gives an indication of the degree of pressure that could be weighed on the media during the campaign.³⁵

The large presence of journalists in the campaign teams should

³² Some actors did not remain at SMS level: Safaricom offered an information service in real time, especially during the broadcast of the results (Ksh 7 per SMS), just like the Nation Media Group did.

³³ Interview with a journalist from the *Standard*, Nairobi, 10 December 2007.

³⁴ See Joe Kadhi, 'How the referendum was covered', 11 February 2007, <http://mediawatchman.blogspot.com>.

³⁵ For an in-depth analysis on the inequalities of coverage between the candidates on the different stations, refer to the study carried out by Strategic Africa for the UNDP, available on www.strategicafrica.com.

be noted; they were often hired as experts in political communication just like the university dons, but also as press attachés. M. Kibaki, for example, turned to the services of the former CEO of the Nation Media Group, Wilfred Kiboro.³⁶ But it is ODM that took up several journalists, having characteristically taken a relatively important place in the field but also having had a taste of disillusionment in the 2002 changes, especially in litigation cases such as David Makali, former Managing Editor of the *Standard*.

Concerning talk-shows, it is worth observing that in the case of *Louis Otieno Live...* the venue of a show in a region became a political stake, especially for the parliamentary candidates, but also in the civic elections (many candidates in the civic elections were part of the audience). The edition of *Louis Otieno Live...* in Narok was quite remarkable in this sense: some candidates who were not invited by the producers spontaneously showed up to be part of the forum. The symbolic resources that the candidates hoped to get from these broadcasts were major—television is supposed to confer credibility and political weight, as well as surpassing one's local ambitions, as it is a medium with a rational reach.

Professionalisation of the public in talk-shows

Another interesting phenomenon in the analysis of structuring the field of political communication in Kenya is the professionalisation of the actors present in audience of these shows. Some activists from different political parties were specifically 'mandated' by the Secretariat to appear in the audience of the talk-shows, so that they would play the role of party representatives. According to a PNU 'representative',

³⁶ « Kibaki's Muthaiga club », *New Vision*, 22 December 2007.

there were about ten of them,³⁷ chosen by the head of communications within the secretariat.³⁸ They participated in several talk-shows during the campaign, thus providing them an opportunity to fine-tune their skills in public speaking and to increase their own visibility (some of these representatives were candidates in the civic elections).

This phenomenon is a means of recruiting members of the public by the producers of the shows and is not limited to political parties. The producers specifically assigned to 'public mobilisation' often united in service research actually turned to a kind of indirect mobilisation through associations, political parties, and community groups, that they contacted and charged with the task of providing audience members. There is thus a wealth of choice to select from for representation in audiences. The control of the media on public speech is therefore relative, as the filtration process is done by these organisations. It is at this level that a 'professionalisation' of the audience of talk-shows is done, and they become new 'personalities' in political communication, acquiring televisual skills and thus capital, which they can reinvest.³⁹ Generally speaking, there was a huge social homogeneity in the audience of these shows. Out of about 40 people interviewed on *Louis Otieno Live...* from 13 December in Nairobi, 20 were senior graduates (universities, colleges, technical institutes). Among the others, three had been to secondary school. 11 stated that they had no academic qualifications. The largest number, 33, claimed to belong to a political party or an association.⁴⁰

³⁷ Interview with a PNU activist, participant in *Louis Otieno Live*, Nairobi, 24 December 2007.

³⁸ According to the PNU activist, these representatives received neither reimbursements for costs incurred or an allowance for their task, as would have been the case in local mobilisation operations or to attend a meeting.

³⁹ In the talk-shows viewed in Nairobi, the members of the public received an allowance or per diem varying from Ksh 100 to 1000, depending on the distance travelled (some came from provinces very far from Nairobi) and had to spend the night there.

⁴⁰ These figures came from questionnaires distributed by this researcher to the audience of talk-shows.

The televised image of the ‘ordinary citizen’⁴¹ or the ‘common man’ thus hides a complex selection process of the people seen in the studio, in which there is call for spontaneous candidates, party and association delegates and a network of interpersonal knowledge of journalists.

Some shows were the direct choice of a representation. Where journalists were could be clearly seen in the interviews, the public’s contribution was more ambiguous, as the value added to the broadcast remained the idea of confrontation between the ‘leader’ and the ‘citizens’. As explained by L. Kaikai:

We specially assigned tasks [to some members of the audience], to ask specific questions. We had human rights, political reform, women’s issues, corruption. We asked these people who had a background in the subject to ask these questions. That is why we had a director of an anti-corruption NGO to ask questions on corruption, we had a women’s leader who raised gender-based issues. (...) These people represented something, the majority of whom were recognizable as they regularly appeared in the media. When a comment on corruption was needed, they knew what to say and viewers were familiar with their faces. They were always involved in public debate. This was an opportunity to bring together both candidates and ‘experts’.⁴²

In a show like *Debate 07*, the producers wanted to create equality between the public and the guest speakers. When R. Odinga came to the studio on 19 December, some of the audience had even been coached by the KTN team.

In *Crossfire*, the Sunday radio talk-show of Kiss FM, the twenty or so people attending the show are also mostly from the upper middle class, holding academic professions. Once again, due to the mobilisation process of the public, who in this case were on the inter-personal list but certainly also due to the show’s format, when a new ‘out-of-studio’ formula was required to “bring political debate to the people”, a show

⁴¹ For an analysis of the importance of this figure in the myth of a communication society, see E. Neveu, 2006, p. 52–55.

⁴² Interview with L. Kaikai, Nairobi, 19 December 2007.

was held at the New Stanley Hotel. This is a five-star hotel in Nairobi, complete not only with tourists, leather armchairs and colonial décor, but also with valets and bodyguards—thus acting as a sort of dissuasion to the participation of the ‘common man’ who would not dare set foot into the hotel.

This was a strategic choice by the producers. According to them, restricting the discussion to intellectual level was more efficient than popular speech.⁴³ in view of speeches by political leaders. From this we see the constitution of public personalities who took on a double status through these shows as they were highly present in the media and could be invited to a forum (as leaders) and in the public (as ordinary citizens). This ambiguity is well summarised in the vague definition of the ‘civil society’. For example, in this ambiguous category is the director of Cradle, a local NGO, who is also a woman-rights activist having participated in the Bomas constitution reform process, and is an advocate of the Law Society of Kenya.

A majority of the people in the audience often had prior experience (albeit different) in speaking in public. They sometimes had responsibilities or political and social involvements. Their appearance at this sort of show often follows a precise agenda: the promotion of a cause, publicity for an organization or party, the search for an audience and exposure. Some appeared mainly in civic elections, an experience which could improve oratory qualities and help in building networks⁴⁴

⁴³ This was especially so on television. A strong division in roles is clear in the journalists' discussions. Radio is perceived as the media for the masses and television for the élite, who, according to L. Kaikai, correspond to the ‘second level of the exercise power.’ For him, television is an opportunity to place leaders face-to-face with their equals, where they would be in a position to challenge the intellectuals. This choice also works for the targeted public: television being perceived by these journalists as an élite media, they prefer to stage élites.

⁴⁴ In response to the question: “*What kind of value can the show bring to you?*” in the questionnaire distributed to participants in the talk-shows viewed, some people answers were along the lines of “*Boost my political ambitions*” or “*Mature my political status*”, etc.

The political communication sector in Kenya is thus structured along lines of exclusion of some actors, to the benefit of 'professionals', despite a lively discussion on direct democracy and popular participation.

THE MORAL AND POLITICAL MODEL PROJECTED IN THE TALK-SHOWS

After having seen the structure of the political communication sphere in Kenya, it is easier to understand the model of the moral and political order observed in the political shows on television. This order declines in interaction models between those led and their leaders, in citizenship and leadership models, and in creating a national ideal.

Contrary to what the violence at the beginning of 2008 would make one think and contrary to some incitation to hate observed in local radio talk-shows on stations such as Kass FM (Kalenjin), Inooro (Kikuyu) and Radio Lake Victoria (Luo)⁴⁵, the political debate on national stations reflected and increased a sort of moralization of public debate, according to well-defined values.

Media coverage of the campaign was generally equal and attentive to suggestions from the candidates, to verbal outbursts and fraud attempts. Opinion polls took centre stage, and human rights defenders were clearly on the scene. Nevertheless, some shows went further than a simple equitable coverage of the debates by proposing a normative model of democratic negotiation, citizen participation and national community by taking tribalism as the first target.

⁴⁵ IRIN, « Kenya : spreading the word of hate », 22 January 2008, <http://www.irinnews.org/Report.aspx?ReportId=76346>. These differences can be, among others, due to the aims of the different radio station owners, often allied to some politicians, or a result of the profile of the talk-show presenters, but it reveals a systematic planning of violence by the directors of the radio station. See Jamal Abdi and James Dean, 'The Kenyan 2007 elections and their aftermath: the role of media and communication', BBC World Service Trust, March 2008, p. 9 et 10.

The reconstruction of a democratic order, the 'rationalisation' of politics

Pluralist representations: accuracy and balance

The first point in this new ideal democracy rests on the order to partisan equilibrium and to pluralism, including identification. This 'balance' and all notions of 'political accuracy' that go along with it, is socially constructed by the producers (NGOs and/or journalists) of the shows. There were nine candidates in total, in the presidential elections. 117 parties were in competition for parliamentary and local council seats. The *Kenya Broadcasting Corporation Act* required the public radio media to provide equal amounts of coverage to the different political parties in a campaign period.⁴⁶ There was therefore no obligation to private audiovisual media to accord equal coverage to all the parties.⁴⁷ In the cases studied, the notion of partisan equity remained an issue at the discretion of the journalists.⁴⁸

As a general rule, this arbitrary judgement was based on opinion polls and collective representation figures in an election that pitted two equal forces against each other—ODM and PNU—with a 'third man', K. Musyoka. In the broadcasts of private stations, the public was ideally composed of an equal number of activists from both ODM and PNU, a smaller number of ODM-K activists and civil society representatives who were invited on account of the 'partisan neutrality'. Basically, these latter were members of local NGOs as well as community associations and corporations. In the panels, there were generally four or five guests,

⁴⁶ "To maintain a fair balance at all levels of time allocation on air between the different points of view. Allocation of air time on free blocks was done in consultation with the ECK during the campaign period preceding presidential, parliamentary or local elections. This allowed the political parties participating in the elections, to present their policies" http://www.kenyalaw.org/kenyalaw/klr_app/frames.php.

⁴⁷ This does not mean that partisan equity was respected on KBC: even if attention to the small candidates was greater on private stations, media coverage was unbalanced as it was highly skewed towards the outgoing president.

⁴⁸ And also a function of the political pressure that they were subjected to.

with a PNU, ODM, ODM-K, civil society (human rights and gender activists), and an expert (consultant or academic) representation.

This model was different from that of the Centre for Multiparty Democracy, whose aim was to support small political parties and advocate for a greater institutionalisation of parties in Kenya. It comprised 16 party members and sponsored a live and interactive mobile TV show on KBC, *Town Hall*. In each region where the show took place, the CMD invited all candidates in the parliamentary candidates to take part in the panel, including those from the small political parties.⁴⁹

The presence of civil society organisations allowed for a readjustment of balanced identification, on which the idea of pluralism also rests. In order to perfect the idea of staging national debates, making the shows credible and due to the predominant issues of redistribution and marginalisation, the producers persisted in recreating a representation of some form of regional diversity (and thus tribal), along with religious and professional diversity. This shows a reconstitution and celebration of a Kenyan nation, reinvented and famous for its diversity, and the establishing of equality in access to speech and political representation. This was symbolized by equal access to the media. According to the producers, equitable identification was respected through specific attention to the profiles of the people invited to form the audience. In promotional speech on these shows, the members of the public were meant to represent the man on the ground, the common man. They became some type of ‘major voters’ or ‘delegates’ representing the different groups composing the Kenyan nation, no matter their appearance (sex, veil, Maasai attire) or by the cause that they represented (women, Islam, farmers, matatu touts).

In the case of the mobile shows, the value of national representation was even further brought to the limelight. For the journalists, the show

⁴⁹ Interview with Omweri Angima, CMD, Nairobi, 18 December 2007.

was not simply an opportunity to discuss a subject. It was a moment for consultation and integration with certain populations in the national debate. This led to insistence on their part when stating the rules of the debate, that participants should speak in their capacity as 'inhabitants' of Isiolo, Nyeri, or Embu. It is with this idea in mind that some journalists bypassed the topics defined by their donors, to avoid restricting the residents of a constituency to particular themes and to offer them an opportunity to make their demands known at national level.

Adding value to the citizen's personal responsibility

Despite this 'community' aspect, it was striking to observe the importance accorded to the figure or the scale of the individual in the shows. Generally speaking, the NGOs involved in electoral education programmes insisted during the campaign period on the responsibility of the electors in choosing a representative.⁵⁰ However, this specific insistence on the individual's political responsibility, be it at the level of the vote or at the level of taking centre stage in the talk shows, should also be put in relation to the rejection of tribalism. Taking the example of the format of the talk shows, the instructions given by the presenter of a show held in Narok were very clear, focusing on the particularity of the show as a performance venue of a re-moralised political order. In Narok, L. Otieno introduced his debate as follows:

We are here as individuals, not to reduce the Maasai issue to what you hear outside. You are not obliged to share our point of view. What you have is an identification card and a voter's card. Therefore if someone raises an opinion that you do not agree with, it does not mean that you must believe what he believes.⁵¹

⁵⁰ The ECK funded the deployment of huge posters in Nairobi with messages such as "do not complain about corruption if you are not going to vote", or even "do not complain about unemployment", etc.

⁵¹ *Louis Otieno Live...*, Narok, December 2007.

The idea was to detribalise the competition for power, to focus on rhetoric, and to discourage ethnic loyalty in the voting process. This was to forewarn about bitter reactions after the results and to promote an idea of politics based on a choice considered as beneficial to the entire country and also as being more 'rational', less given to identification passions, with a Cartesian ideal of an individual enlightened due to a freedom from ethnic belonging. This idea of rationality has the tendency to associate the idea of ethnic allegiance to the irrational, while this same step more often revealed the hope of economic repercussions and thus of a choice that should be carefully considered.

Focusing on problems rather than on candidates

Parallel to this specific attention to personal political responsibility, the talk shows also had a rule to reject discussions on people and individuals, such as giving an assessment or critique of actions or of the personality of a politician.

This example leads us to the third characteristic of the model, the ideal of an issue-based campaign. This terminology in itself comes from political communication experts in the United States.⁵² Issue based is opposed to horse-race or game based coverage. In Kenya, thanks to this principle, the idea still encounters tribalism and detaches the stakes of the election from ethnic identity, to add value to trans-ethnic issues, on which the debates focused.

The issue-based ideal has important implications on the list of journalistic criticisms by depreciating direct criticism of a leader or candidate and by modifying the conditions of confrontation with the leaders. On the other hand, although the majority of the producers have kept the desire to launch oppositional debate, the idea is not to

⁵² J. Gerstlé, 2004, pp. 132–136.

make the opposition less dramatic (with statements such as: « *After all, we are all Kenyans* »; « *If your neighbour has a different opinion it's not a big deal...* »), but to seek solutions and points of agreement, and to have a strong propositional side. The candidates had large blocks of time to expose their programmes. On the other hand, some sought to deport from the list of criticisms from time to time and to bring forward positive aspects of the political situation. *Louis Otieno Live...* recorded in Isiolo, for example, was begun by the presenter in the following words: “*I would like us to start with the positive things in Isiolo, of the things that are going well.*”

Making politics a science: the role of experts

These talk shows are also a narration of a performance of political ‘normalcy’ and ‘rationality’ of the country, which corresponds to the expectations of the alternation of 2002 as time for democratic normalcy in Kenya.

For this, the experts (cited earlier) played a key role. Some openly sought to change the rules of the political game to make it more professional, make it a science, make political competition a rational and calculable affair of which they would have the key. Hence, for Isaac Otieno, consultant:

The idea of professional politics only gained ground in 2002. Because in 2002 people like me began to be employed to only work on politics it became profitable and professional. Thirdly, working exclusively on politics came to be seen as a scientific activity. Thus in 2002, we tried it out and realised that it worked very well and that it led to NARC's success.⁵³

Whereas political representations as a science may have permeated into the electoral field, they also entered the media through the presence

⁵³ Interview with Isaac Otieno, consultant, Nairobi, 14 December 2007.

of experts on television. In this case as well, it is tribalism that was targeted as these experts had a desire to restore political competition on the field of economic and social expertise, to evaluate the programmes and actions of the leaders, and to focus the debate on the priorities defined as a result of scientific expertise.

They also took part in a valorising the recentralisation of a choice of leader on his personal ability by developing modules of advice on communication and in political marketing (even if the facts of this advice in political marketing obviously exploits political potential in redistribution networks, including tribal). The scientific aspect of politics is also veered against the invisible, religious invocation and the various components of charismatic power (especially in 'politics of the stomach,' sorcery, money etc., and relationships), with the desire to explain and expose how the leaders got to their positions, to take political competition to the field of science and thus remove the sacred aura of power. As indicated in the extract of the interview with I. Otieno below, television is (probably paradoxically) meant to take part in this desacralisation, via strictly followed rules on the screen and the exposure of candidates to questions from the participants.

There is popular representation in Kenya which sees politics in itself as a dirty and nasty thing. This is true of the people who want to access power in order to steal money, people who want power to control, dominate and dictate behaviour. And when they see us speaking here, they see that politics is actually a harmless profession. That politics is scientific! We are speaking here of science in the media, we use figures, we talk of programmes, we raise questions on how measures are put in place, we bring out a political economy in decision-making in the country, a political economy of violence, a political economy of corruption, which is a huge problem in the country ... And then they see us, they can look at us, watch us on TV and can therefore say: 'These are normal people! They are harmless'.⁵⁴

⁵⁴ Interview with I. Otieno, *op. cit.*

Agitating for social peace through the media

It is rather striking to see the performance dimension that the NGOs, experts and journalists project in the talk shows. With these broadcasts, one sees a process of 'civilisation of political exchange' according to the values that have been restored and resulting from strict regulations on the screen. Beyond a simple balanced coverage of the campaign, Kenyan journalists have sought to influence the form and depth of electoral debate, to 'moralise' political exchange. This attitude was again found in the attitude of the media, including the press, after the beginning of the violence, with a clear and shared position on the level of coverage of the confrontations and the position to take concerning suspicions of fraud.⁵⁵ The political communication sphere in Kenya is thus additionally structured around these norms and the 'moral mission' of the media.

Journalists and NGOs also made a bet on the 'ritual of boxed reversal', as described by James Scott.⁵⁶ This means that in a dynamic similar to that of celebrations or fairy tales that show a reversal of power, these talk shows as the stage for democracy will play a cathartic role, and have an effect in the 'real' world of politics by defusing political anger and recourse to violence: the expression of demands and the playing the role of citizen allowed for an absorption of frustration and release of pressure, which J. Scott refers to as 'the valve theory'. This theory must be considered with precaution and not be systematised, as this sort of ritual can represent a 'preparation' rather than an 'alternative' to the reversal.⁵⁷

Another aspect of the performance project is that of an equalisation of the participants, characteristic of the myth of a communication

⁵⁵ See the analysis of B. Rambaud in this volume for more on this point.

⁵⁶ J.C. Scott, 2006 ; <http://www.vacarme.eu.org/article675.html>.

⁵⁷ For a study of the effects of regular participation in talk-shows on individual careers and entry into politics, see F. Brisset-Foucault (2005), pp. 211–232.

society, which draws from the idea of a model of an egalitarian society network.⁵⁸ The inequalities of the facts presented in the Kenyan society are supposed to disappear in the model of debate staged in the talk shows, even if they resurface as inequalities in access to speech in the shows and inequalities in oral capacities etc. Once again in the terminology of James Scott, the 'public manuscript' of the show would be equality, and the 'hidden manuscript' would be inequalities. He illustrates this by giving the example of an academic seminar, an example that can be very well applied to televised talk shows:

The public manuscript desires that all those around the table be endowed with the same power, and this is what is encouraged in the architectural form of this kind of meeting. However (...) the distribution of power has absolutely nothing to do with equality; despite this, it is impossible to bring this out explicitly and directly during the seminar.⁵⁹

This reinvention of social conditions in the national debate, the detachment from the ground as earlier expressed, is also due to this performance characteristic and the projection of an idealised political arena.

The variables of the set

Self-presentation and imaginary citizenship in public intervention

After having analysed what the values that the producers of the shows wanted to stage were, it is time to put a halt to this type of debate projected on television and especially on the interventions of the 'citizens'. What are their characteristics? To what extent are they appropriate to the model? What can be said and what is unspeakable on television?

⁵⁸ E. Neveu, 2006.

⁵⁹ Interview with J.C. Scott, « Dans le dos du pouvoir », *Vacarme*, n°42, Winter 2008, p. 9.

Several factors are taken into account in the analysis of these interventions. First, the social homogeneity that has earlier been described, followed by the control imposed on citizens' speech by the producers of the shows.

In the case of *Agenda Kenya*, the contributions were initially oriented by distributing two pages summarising the major issues of the subject to be discussed. This happened an hour before the broadcast. Then the presenter lengthily 'briefed' the audience on the topic, suggesting to them questions and issues to raise. After this, the members of the audience had to write two questions on another piece of paper. An 'editorial committee' chose four of these (out of a total of 200, as the show had about 100 people in the audience, at each screening). Knowing that the questions were selected, some people in the audience had a tendency to take up the presenter's suggestions. These four questions were used to launch the debate, especially after commercial breaks. Out of these four questions, an average of five were posed by people raising their hand and being chosen by the presenter. In the different sessions that were observed, the questions from the public precisely conformed to topic stated.

Mobile shows, especially *Louis Otieno Live...* were different. Each time, the debate centred on a preoccupation common to all the shows: the redistribution of resources. This was the case even where the key questions varied: '*Inclusion and Nationhood*'; '*Leadership and Development*' etc. To understand this phenomenon, several factors must be taken into account: first, as earlier seen, the question of the topic to be covered was a result of negotiations between the donor (who preferred to have other more transversal themes such as the youth and women) and the editorial team. The former wanted to localise the debate, making it relevant to issues on, the ground to the point where the moderator placed specific emphasis on the notion of community (Kamba, Maasai etc.) This was in order to place the show in the role of political intermediary between the centre and the periphery

or grassroots, which were strongly integrated in the discussions of the journalists within the general elections process. It amounted to justifying political utility with a political (placing the media at the centre of Kenyan political space) commercial aim.

In this show, the contributions of the 'citizens' were homogenous. They first put value on the land (Kambaland is a place of 'milk and honey', Maasai Mara is 'one of the wonders of the world', 'we are sitting on gold, and we do not know it', etc.) and at the same time, they also spoke about the poverty of the area (no roads, dependence on food handouts, no education etc.). Another notable point is the importance of the discussions of 'self-mobilisation', with injunctions such as 'we must mobilise ourselves [to emerge from poverty], no one will do it for us' etc. However, the most poignant characteristic was the often brutal criticism of local leaders who did not ensure redistribution. This criticism and focusing of debate on the local challenges partly explains the direction of the debate by the presenter, as well as on electoral deadlines and the huge presence of politicians among the audience. These latter used this as an opportunity to put forth their legitimacy as leaders, and to campaign.⁶⁰ This factor was a hijacking of the recommendation for an *issue-based* campaign.

In all the shows, the leaders were actually at the centre of reproach—corruption, alienation from the grassroots, non-consideration of problems of poverty and under-development, with a particular focus on issues of responsibility to citizens, whom they were supposed to serve. On this point, the use of '*we*' or of '*me*' opposed to '*you*' or '*them*' is enough of an indication and reinforcement of the idea of a homogenous community of voters. In *Agenda Kenya*, a contributor stated:

You politicians have created this culture [of vote-buying]. **We** are going to have a politician who will come to give **us** money because

⁶⁰ This was strikingly so in Narok, where the show turned into appraisal of William ole Ntimama's mandate.

it is a culture that **you** have created. No politician must give **me** money!⁶¹

Generally, these shows displayed a strong scepticism, or anger directed at those elected and the political élite. It was striking to note that in this edition of *Agenda Kenya* on financing political parties, the applause was mainly for those who were neutral: a university don presented as a governance and public policy consultant, and a former vice-chairman of the ECK, who had both proclaimed their partisan neutrality at the beginning of the show. These two people took highly critical positions concerning the use of money during the campaign.

The text messages sent during *Agenda Kenya* and in *Louis Otieno Live...* were homogenised and classified into two categories: 'yes' and 'no', in response to a question asked at the beginning of the broadcast,⁶² therefore leaving out the accompanying comments. However, those sent to the radio broadcast *Crossfire* confirmed the use of this type of channel to express disillusion or anger towards the political élite, in language that was often more crude and direct than that on live discussions on the screen. Below are a few examples taken from *Crossfire*, on 9 December 2007.⁶³

⁶¹ *Agenda Kenya*, « Political financing », December 2007.

⁶² For example: « Should political parties disclose the source of the fundings ? » (*Agenda Kenya*, « Political Financing » December 2007) or « Are elected leaders responsible for development? » (*Louis Otieno Live...* « Leadership and Development », Kitui, December 2007).

⁶³ According to the producer of the show, several hundred SMS were received at each edition. At the end of the show, these were printed out and given to the guest speakers, who each chose two or three to air. In the shows viewed, an average of seven text messages were read. Those cited here were not necessarily aired. They are reproduced here verbatim. « We have thieves n corrupt people across the political divide, we are waiting 4 all of them 2 die, we are helpless »; « Corruption is corruption let people like Maanzo not talk about corruption because him he was bribed in order and given a vehicle in order to frustrate Hon Raila group from his party ODM-K. »; « Kenyans are being overtaxed to pay the same MPs who stole billions & are keeping abroad. » ; « i read the stupidity indew column every Saturday] in the nation. I think this parties belong to this group n particularly PNU with collaboration the mois biwotts patnis of this world. It speaks volumes that ODM is party 2 this nonsense with mois remnants in its ranks (...) »

We have thieves and corrupt people across the political divide, we are waiting for all of them to die, and leave us to ourselves

Corruption is corruption—let people like Maanzo [chairman of ODM-K] not speak of corruption because he received bribes and a vehicle in order to make Hon Raila group separate from his party ODM-K

Kenyans are over-taxed to pay the same MPs who have stolen billions and hide abroad

I read the list on the Stupidity Index every Saturday in the *Nation*. I think that some of these parties belong to this group, especially PNU in collaborating with all the Mois, Biwotts and Pattnis⁶⁴ of the world. It speaks volumes that ODM is part of this absurdity with the likes of Moi in its ranks (...)

In *Louis Otieno Live...*, self-introductions centred on the affirmation of one's right to speak « *as a citizen* », « *as a Kenyan* », and the value of his representative role, be it gender, generation, religion or ethnic community or even party: « *I want to speak for the women of this country/district* », « *as a student...* », « *I'm a member of the League of Kenyan women voters...* », « *as a supporter of PNU...* » etc. Although this phenomenon was quite visible in *Agenda Kenya*, the majority of the participants only gave their last and first name, or went directly to the question, which correspond to the model of the detribalised and individualised image of the voter. In the issues of *Agenda Kenya* watched, ethnic references in self-introductions were absent, even though belonging to an area (designated in non-ethnic forms like « *the people of Molo* », « *someone from Garissa* »...) is valorised in an idea of authenticity of the experience shared by the contributor.

The situation is different in « *Louis Otieno Live on the road* ». Whereas the aim of these shows is to put an end to tribalism, the

⁶⁴ The former president Daniel arap Moi, Nicholas Biwott, or the 'Total Man', one of the main figures in political repression under Moi's regime, Kamlesh Pattni, one of the protagonists of the Goldenberg scandal of the 1990s.

references to ethnic affiliation were not removed. They came through the airwaves in language couched in several terms:

Celebration of cultural diversity: this was evident by encouraging traditional dress, invitations to say a few words in the vernacular, a discussion on celebration of cultural peculiarities and a reconstructed national identity mosaic, L. Otieno's shedding of a formal suit in favour of the tunic worn by Muslims in the eastern parts of Kenya etc. Ethnic language in this instance detaches itself from political stakes.

Announcing one's ethnic orientation: this was used by journalists and participants as a guarantee of belonging to an area, seen as a source of expertise and legitimacy to speak. Depicting the common man by insisting on his belonging to an ethnic community shows the anchoring of the broadcast to 'the average citizen', despite the elevated social profile of the participants. In the different shows, the presenters encouraged witness reports, experience on the ground, and gave recordings from the field. In *Louis Otieno Live on the road*, there was a clear encouragement to appear as a Kamba or Maasai block in the national media. Contributions by the public also followed this trend. However, it is important to specify that self-introduction as a member of an ethnic community always operated as « *expertise from daily life* », ⁶⁵ of identification of the problems or assets of the land and of their representation on a national scale. Ethnic loyalty is strongly devalued.

Self-introduction : concerning the language used to indicate ethnicity, it is worth noting the names of ethnic groups are used to identify oneself and not the Other. This means that in a broadcast done in Kitui, the word 'Kamba' or 'Ukambani' will feature prominently, together with expressions like « *the people of Kitui* », « *our community* », « *this community* », « *the people of this region* », « *we* ». Nevertheless, the designation of the Other systematically goes through roundabout

⁶⁵ S. Livingstone, 1994.

means: « *People from other regions* », « *so-called mainstream communities* », « *other communities* », « *some ethnic groups* », « *the right ethnic group* » (in describing ethnic groups that enjoy the fruits of redistribution), « *neglected communities* », « *pastoral communities* », « *minorities* ». The identification of the Other by the name of its ethnic group therefore remains very rare on television and leads to a list of unspeakable terms on television, without this necessarily being linked to the rules stated at the beginning of the show.

The unspeakable and variations in identity

Contributions of members of the public are not always appropriate to the expected model. The most usual example of going beyond the boundaries of the unspeakable is found in what journalists call the 'personalisation of the debate'. However, this blameworthy personalisation must also operate within a certain format. It was notable that during the broadcast of *Louis Otieno Live...in Narok*, attacks against W. ole Ntimama (harsh and clearly directed against him through qualifications such as « *the leadership of Parliament in Narok North* ») were not cut short by the journalist, despite the strong instruction to base the debate on *issues* and not on *personalities* according to the model. Nevertheless, the journalist very quickly stopped a nominative contribution:

If Mzee Ntimama can do nothing to influence the government, I would like to know what he is doing there. Do not misunderstand us—it is only that Mzee Ntimama has been a Minister of State for a long time. He claims to have an influence on cabinet decisions now, but not on, those that concern the development of Narok! He is simply tired, he must retire to his home!

The attention on these boundaries of the speakable and the confrontation between identity and public language adopted within the

talk show on one hand, and the discussions held in interviews on the other, were particularly fruitful. They show that there is no incompatibility between language or the adherence to an individualisation model and the technicality of politics promoted by talk shows and that of ethnic loyalty, personalisation of political demands or culturalism. The talk shows model and the discussion surrounding them tend to create a dichotomy or an opposition between an ethnic dimension and an individualised dimension of subjectivity, or even between a tribal dimension and a political issues dimension.

In reality, these dimensions were revealed to cohabit among some participants interviewed. There were shows where identifying with an ethnic group was not discouraged as the discussions created a state of political 'loyalty' in the name of ethnic group, associating political and ethnic belonging and revealing the unspeakable. The two were combined and this is what was observed through the interviews. Among the most regular participants in these shows, some did not hide the 'tribal' reasons of their political affiliation, which was 'unspeakable' in a talk show. The extract of an interview with one such participant is given below (he was interviewed at his fourth appearance since the beginning of the campaign period).

In some aspects, tribal affiliations also veered me towards PNU. This is a fact and I won't lie to you about it...

Because you would be better with other Kikuyu?

Because of the political affiliation... and the politico-tribal affiliation. I am not saying that it is 80% of what pushed me to PNU. It is perhaps 10%, 10% in total. Because I have never been for the tribal factor as it has never helped me.

But you accept that it has an influence...

Yes, it makes a difference. It has made a difference. Because for me, being from Central Province, going to ODM would not help me.⁶⁶

Beyond this false dichotomy between a 'rationalised' and televised citizenship and an ethnicized one, party affiliation also had the tendency to be set in the talk shows due to the means of recruiting members of the audience. The life tales of the participants show elements of complex political loyalties, constantly shifting and winding, within which lies ethnic, generational, ideological and gender aspects. The analysis of talk-shows in the electoral campaign in Kenya shows how much the producers of these shows, journalists, NGOs and experts, wanted to see the shows as a moralisation tool for political life in Kenya and to fight against tribalism. The producers therefore fronted an idealised debate, incarnated by the 'professionalized' middle-classes, in a configuration that masked inequalities, giving an impression of detachment from the ground and a framework of public speech. The voluntarism seen was to anchor the campaign thematically and to detach the voting process from ethnic loyalties but it collided with the regional homogeneity of the results. However, the Kenyan media in general and the talk-shows in particular participated in spreading demands for transparency from political leaders (associated to their direct presence on television before the public), demands for citizens to speak out and a notion of political balance, as seen in the national television stations in marginalised areas and by the partisan and identification equilibrium recreated in the public.

This analysis provides for a better understanding of the attitude of the media during the crisis that followed the voting process. The journalists indeed adopted a common position in calling for peace and choosing not to take sides on the question of election fraud, or even to lead an investigation on the subject. This amounted censoring

⁶⁶ Interview with a PNU activist, member of the audience in *Louis Orieno Live*, Nairobi, 24 December 2007.

some information on the violence, due to threats by the government on freedom of expression but also for fear of being part of the conflagration and fixation on identification rancour.

Kenyan journalists acted prudently faced with the urgency for a return to calm and under pressure from the State. On 30 December, the government went so far as to place a ban, on audiovisual media giving live broadcasts. The journalists rejected this ban. Kiss FM continued to emit live news, and the Media Council, under W. Waruru expressed the profession's collective refusal to bend to this ban. However, apart from Kiss FM, this measure ended up being applied to some extent.⁶⁷ Despite having been a performing model of detribalised debate, talk-shows disappeared from television screens. On 29 January, KTN and the Media Institute, an organisation headed by David Makali, deposed a complaint against this ban, which was eventually lifted on 4 February.

The attitude of the press during the crisis was linked to this interdiction and was also in continuity with the desire to battle against ethnic divisions. This editorial choice of responsibility on the part of Kenyan journalists corresponds to the list of criticisms and control of the media by the government, also translated into a mutation of the code of ethics that reflected and encouraged talk-shows in Kenya today.

⁶⁷ An exemption was made for the opening of the Parliamentary Session on 15 January.

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THE POLLING DEBATE IN KENYA'S 2007 ELECTIONS

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This paper discusses opinion polling in Kenya's closely contested 2007 Presidential elections. It analyses the relevance of public opinion in Kenya's emerging democracy in the context of the closest presidential contest in Kenya's history.

The paper notes that the country is still in transition from a long historical experience of authoritarianism and dictatorship including a period of a 'culture of silence', to freedom of expression, and this poses a strong challenge to pollsters.

Results of several opinion polls conducted by local research firms before the 2007 General Elections elicited mixed reactions from politicians depending on the results. Candidates who ranked high on a particular poll, understandably, consecrated its legitimacy; on the other hand 'losing' candidates were quick to cast aspersions on the reliability and validity of the survey results.

There is therefore need for mechanisms to ensure that error-prone or impartial poll surveys that fail to correctly predict election victories do not risk fueling post-election conflict.

Opinion polls in Kenya are becoming a permanent feature of Kenya's politics and will continue to serve as a double-edged blade with the potential of expanding the space of democratic expression. On the other hand, they can be a risk for its fragile democracy.

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Introduction

The public opinion poll continues to have a prominent role as a source of information in different societies of the world. As such, it is important that users are conversant on how to evaluate and place this type of information into context.

Politics has always been a topic of intense discussion and debate. In fact, so much has the dependence on opinion polling in politics increased in the last few decades in some liberal democracies that where the media is referred to as the “Fourth Estate”, then some recent studies reckon opinion polling to be the “Fifth Estate”.

After 2002, pollsters in Kenya started openly conducting and releasing opinion polls to the media. As expected, the polls have elicited mixed reactions. Once opinion polls results are released, charges and counter charges on the efficacy and genuineness of various polls are made by opposing political parties. This may reflect the high level of competition and dependence on the polls by various political parties, in using them as campaign inputs. It is not uncommon for politicians to use favourable findings in their election speeches.

Each election is fought on certain issues and themes, which are propped up by political parties, electorate, interest groups, and media. Opinion polls reflecting the opinions and expectations of the people on various issues can bring about a meaningful political debate, which undoubtedly will strengthen the political process.

Whenever, an opinion poll is published, some people have expressed doubts whether it could have an effect in encouraging the voters to vote for the projected winner, or provide an ‘underdog’ effect, possibly evincing sympathy and support for the apparent loser. While the polls themselves attract attention over sample size and methodology, no serious research, however, is conducted in Kenya to gauge their impact on the election outcome.

57.4% of people polled by *Sunday Nation* revealed that they had

faith in the opinion polls while 42.6% did not believe them.¹ Among those who supported opinion polling, 52.3% said the results reflected the reality on the ground. This statistic would indicate that large majorities lay persons, policy professionals and leaders, see the science of polling as potentially useful to the process of Kenya's emerging democracy.

Kenya National Bureau of Statistics (KENBS)² and its constitutive Act (*Statistics Act*, 2006) regulate opinion polling in Kenya. The Act stipulates that “*any person who knowingly compiles for issue any false statistics or statistical information shall be liable on conviction to a fine not exceeding Sh 100,000 or to imprisonment for a term not exceeding one year.*”

The Act became law in September 2006 and as this was the eve of an election year, the move was seen as an effort to rein in pollsters. It was feared that it would keep politically-based opinion polls away from the public where they were not in the Government's favour. However, this Act has never been invoked.

This paper will locate the power of opinion polling on the psyche of the electorate in Kenya. It describes the relationship between opinion polls and the 2007 Presidential elections. Lastly, it questions whether the growing industry of opinion polls requires effective poll watchers to ensure a high standard of professionalism.

Impact of opinion polls: theory and evidence

The fear of undue influence on voters is the reason why many democracies have discussed and/or regulated the publication of opinion polls concerning elections.

¹ “Most Kenyans believe pollsters,” *Sunday Nation*, December 9, 2007 p 2. In this survey, 2120 people distributed countrywide were interviewed

² The KENBS took over from the Government Department Central Bureau of Statistics.

Kenya's 2007 General Election registered the highest number of opinion polls ever conducted in Kenya. This elicited mixed reactions from the electorate and politicians alike. This controversy raises two scenarios: — the manipulative power of the opinion polls on the psyche of the electorate, and secondly, the genuineness and scientific basis of various polls.

Public opinion polling is rooted in the virtuous and noble principles of democratic theory. In *The Pulse of Democracy* (1940), George Gallup and Saul Rae credibly assert that polling helps to destroy tyranny and promote democracy because pollsters go straight to the people and ask them what they think about their political leaders, their policies, and about various other public policy concerns.

In his essay "Why Respond to Polls? Public Opinion Polling and Democracy," Robert Shapiro argues that polls are a public's best means for balancing the power and influence on interest groups and political action committees.³ It is thus consistent with democratic practices and principles and can be used effectively to help promote a democratic society.

Vincent Hutchings in *Public Opinion and Democratic Accountability*⁴ challenges the pessimistic, generally elitist view of democracy that casts doubts on the public's capacity to make informed democratic choices. His study finds that voters are highly responsive when their issues are raised in campaigns, suggesting that elite efforts at controlling the political agenda raise the political temperature of major constituencies.

The emergence of the "rational public" as a concept in mass public opinion research has shifted attention away from the notion of the public as poor decision makers. Recent scholarship on the nature

³ Shapiro, Robert Y. "Why Respond to Polls? Public Opinion Polling and Democracy." <http://www.publicopinionpros.com/features/2004/nov/shapiro.htm>

⁴ Vincent L. Hutchings *Public Opinion and Democratic Accountability: How Citizens Learn about Politics*, Princeton, Princeton University Press, 2003 (171 pp).

of public opinion has shown it to be stable and rational, and these authors claim it as being viable for basing policy decisions upon.⁵ This is especially so in Africa where the leaders are seen as “fathers” and are referred for advice, even for the most mundane tasks.⁶

In an earlier work, Shapiro and Benjamin Page elaborate on the idea of collective wisdom.⁷ The argument for collective wisdom seems to hold much weight and, would lend itself to the fact that polls are in fact a legitimate and useful means for harnessing the collective policy preferences of the public. If this view is accepted, a reader can subsequently see that the problems associated with polling are not inherent in the science of polling itself, but rather the use of polls for illegitimate purposes. Therein lies the detriment to democracy.

From this point it will be easier to ascertain how polls can be used to positively influence democratic debate on policy making and fulfil the democratic process to a greater extent.

Measuring polling effects is problematic since there are several ways in which the publication of a poll can change a voter's electoral choice. The famous bandwagon effect assumes that a political party or candidate gains by a positive polling trend. The opposite of the bandwagon effect is the underdog effect in which people vote out of sympathy, for the party perceived to be ‘losing’ the elections.

At other times respondents might prefer not to answer questions they find sensitive. In Kenya for example when doing surveys on sensitive subjects like same sex marriages or abortion one is highly likely to experience what has been termed a spiral of silence.

⁵ Page, Benjamin I., and Robert Y. Shapiro. 1992. *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences*. Chicago: University of Chicago Press. Powlick, Philip J. 1995. The Sources of Public Opinion for American Foreign Policy Officials. *International Studies Quarterly* 39 (4):427-51.

⁶ The oft quoted remark is when politicians “advise” farmers to plant since the rains have come.

⁷ Shapiro, Robert Y, *ibid*

Since the popularization of public opinion polling, the issue of response rates has been a recurrent methodological concern.⁸ It has gained prominence due to the escalating importance of public opinion polling in politics. Sometimes response rates can reach levels that are so low that a survey's representativeness is called into question.

Another outcome is the 'boomerang effect' where supporters of a candidate shown to be winning feel that s/he is 'home and dry' and that their vote is not required, thus allowing another candidate to win.

Pollsters in Africa face numerous limitations. In the rural areas especially, the language barrier is a hindrance to getting accurate information. Most people are not fluent in English, French or Portuguese and their opinion is predictably left out of surveys. Others are pollsters' generic problems of using unsound methodology and biased sampling.

It matters greatly how the pollsters ask their questions. Questions can be misleading or phrased to prompt a certain response. Additionally, questions posed in different ways can get very different results.

Sometimes, respondents offer opinions on subjects about which they have not thought much and do not care at all. People sometimes answer pollsters' questions just to be polite—because they believe they probably ought to have an opinion. That gives pollsters a lot of room to 'manufacture' opinion, especially on issues of narrow rather than wide concern.

Pollsters are not charitable patrons and they are actually people in business who may sometimes deliberately engineer results in order to generate a certain result to please their clients. In Kenya, surveys have opened new revenue avenues for research companies, which in 2007 stood to collect a staggering Sh 3 billion. The cost of an opinion poll

⁸ Groves, R.M. and M.P. Couper (1998) *Nonresponse in Household Interview Surveys*. New York: John Wiley and Sons.

depends on a number of factors including the kind of information a client wants and sample size. It generally costs a minimum of Sh 1 million to do a sample of 1000 people spread across the country.

“In Kenya, campaigns are finance intensive ventures. That is why it makes sense to know how you could fare before you commit any money. That is why serious contestants could be willing to subscribe to the verdicts of an opinion poll before committing their money to proper campaigns,” says Dr. Carey Onyango, Vice-Chairman Centre for Multiparty Democracy-Kenya.

Hence when opinion polls are tilted during elections to favour certain candidates this has major implication for democracy and governance if voters are influenced into making the wrong choices.

When interest groups commission pollsters to ask leading questions to gather ‘scientific’ proof that the public agrees with whatever demand they are making on government, they demean polling and mislead the public. When political consultants use information gathered through polling and focus groups to camouflage their clients’ controversial policies with soothing, symbol-laden, and misleading rhetoric, they frustrate democratic deliberation.

Thus, it is desirable that the public be protected from unsound election polls and from illegitimate pollsters. While the trained eye may be able to distinguish between valid and invalid election survey results, the general public will benefit from some guidance on how to deal with election polls. There are however many different factors determining why and how people vote, and no one would argue that opinions polls alone are a major cause. These include party strategies and media bias.

The above represent only a few of the reasons put forth by proponents of polling and merely serve as a general introduction to the claim that public opinion polling is, a legitimate practice.

History of silence

Kenyans have never been adept at predicting election outcomes before 2002 few opinion polls were being done. Due to censorship during the KANU era, many firms feared conducting opinion polls and media organizations could not even publish the results.

In 1997 and 2002, a few opinion polls were conducted, which predicted that the then President Daniel Moi would win the election but none were made public. After 2002 with the increased democratic space, opinion polls have been regularly conducted with two target groups: the general public and business leaders. General public opinion polls seek to provide systematic and representative public perceptions on social, economic and cultural issues.

The Steadman Group is considered the pioneer of opinion polling in Kenya with its Business Leaders' Confidence Index (BLCI), which collects business leaders' perceptions towards the economy. The BLCI is now widely used by Government and business leaders in a number of countries in Africa. *"We decided to take opinion polls beyond the public to businessmen and it is paying off. Regular content on these polls include politics, crime, consumer confidence, government performance rating. They have been conducted in Kenya, Uganda and Zambia,"* says Waititu.⁹

The country has seen a gradual increase in the use of opinion poll data to inform social, economic and political issues. Another research company, Consumer Insight (CI) has also developed a research methodology called Target Group Index (TGI) that is specifically geared to establish targeted consumer behaviour.

The fact that Kenya is now viewed as ripe market for opinion polls market started to manifest in 2005 when International Research Network Ltd ceded its operations in the country and gave way to a local firm called Research and Market Services Ltd (RMS). The move

⁹ 'Billions from opinion polls' *East African Standard*, July 3, 2007

was meant to position the new company to better tap into the country's emerging polling potential.

The Steadman Group conducted opinion polls a month apart (October and November 2005) just before the 2005 constitutional referendum. The polling results predicted that only 43% per cent of the electorate would support the draft constitution, which came to pass as the draft constitution was rejected by 57% of the actual voters.

Since then, Steadman Group has become influential in shaping public perception and its findings are deemed critical in tipping the balance of opinion on national issues.

However, the 2007 elections saw the entry of three other pollsters—Infotrack Harris, Strategic Research and Consumer Insight all commissioned by the *Daily Nation* Newspaper.

In July 2007, Infotrak Research and Consulting (IRC), sealed a deal with a US company, Harris Interactive Global Network of research companies in New York to bring the Harris Poll—one of the world's longest running opinion polls to Kenya. Around the same time, the Steadman Group announced the commencement of a fortnightly opinion poll it would use to gauge people's perception about a variety of issues, including politics across East Africa.

These strategic moves are a response to market demands, driven by several politicians who are breaking from tradition and commissioning their own opinion polls, to gauge voters' perception and thus help them chart their course.

The 2007 General Election registered the highest number of opinion polls ever conducted in post-independence Kenya. The surveys elicited different reactions from the public and this has posed new challenges to polling in Kenya.

2007 elections: a statistical dead heat

Although there were nine Presidential candidates, the 2007 contest involved three main contenders, the incumbent president Mwai Kibaki sought a second term as the candidate of the Party of National Unity. His main challengers were Raila Odinga of Orange Democratic Movement (ODM) and Kalonzo Musyoka of Orange Democratic Movement-Kenya (ODM-Kenya).

Similar to the 2005 referendum, the 2007 poll was seen as a contest between Kibaki and Raila. Then as now, the constitution and economy were the most important issues. Ethnicity largely informed voting patterns in the country.

Presidential Public opinion polls conducted before the 2007 elections sought to predict how the nation would have voted were an election held on the day of the survey. In effect, they reported the current state of play between the rival parties. Throughout the campaigning period, the pollsters predicted a very tight race, which would be determined by the voter turn out. However, these were disputed by the main challengers often citing ethnic and political bias of the pollsters.

Two major reasons lead to questionable poll results: unsound methodology and/or deliberate intent to release to the public fabricated or predetermined outcomes. The glaring huge gaps between results of the different pollsters while they were polling the same presidential candidates and topical issues were suspect. "*This was largely due to various firms using different sampling frames,*" says Arthur Bore.¹⁰

Since 2006 President Kibaki has been enjoying high ratings but it should be recognized that it a period during which ODM was experiencing a power struggle between Kalonzo Musyoka and Raila Odinga. When Raila was chosen the ODM flag bearer, the polls started

¹⁰ A research officer at Steadman Group. Interview conducted on 1st November 2007

favouring him over the incumbent. However, there were remarkable variation margins between the different pollsters all through the campaign period.

For example, on 17 November 2007, Raila garnered 40.7% in the Consumer Insight poll, which gave President Kibaki 41.4%. Kalonzo of ODM Kenya remained in third place with 14.7%.

The results were not anywhere replicated by the two other pollsters. Infotrak gave Raila a 10-point lead over the President—Odinga 47.3%, President Kibaki 37% and Kalonzo 13.7%. Strategic PR had Mr Odinga ahead of President Kibaki by 11%.¹¹

In a Steadman poll released on the same week, the gap between Raila and President Kibaki was recorded to be four points. Raila was recorded to have 45%, Kibaki at 41% and Musyoka at 11%.

While explaining the different variations, Steadman Managing Director George Waititu explained that they had changed their sampling method from population size to registered voters per province following the closure of the Electoral Commission register. This, according to Waititu “*was the best method since it is based on population concentration in the various regions.*”¹² This meant that the province with the higher number of registered voters had a higher representation in the final sample that was selected at random.

However, Strategic Public Relations had been using the voter registration figures all along and has always had a much larger gap than Consumer Insight and Steadman group.

Infotrak, which had been using population size, and in the wake of the Steadman Group results decided to test their own figures for the

¹¹ Consumer Insight and Strategic Public Relations were basing their sampling on the number of registered voters per province rather than population size, as Infotrak was.

¹² George Waititu's address to the press, November 9, 2007

Daily Nation poll by working on two different sampling methods; their regular one based on population and a second one based on registered voters per province. The difference was negligible.

Although the President closed in slightly on R Odinga, the difference was insignificant and what might have been noteworthy was Kalonzo's share of the vote moved up from 13.7 to 16%, at the expense of both front-runners. This might be explained by the fact that whereas Kalonzo's stronghold, Eastern Province, has 15% of the population, it has 17.6% of the registered voters.¹³

These huge variations led to consistent allegations that the 'polls are flawed and inaccurate' even leading to Kalozi Musyoka saying that "*there is only one week left before Steadman credibility is put to test when Kenyans cast their vote and results made known.*"¹⁴

Candidates who rank high on a particular poll, understandably, consecrate its legitimacy; on the other hand "losing" candidates are quick to cast aspersion on the reliability and validity of the survey results. "*Publicly they will not show it but they treat our polls seriously. Some send agents to come and get copies of the poll results from our offices,*" said one informant.¹⁵ The mere fact that politicians try to analyse and understand the poll results albeit discreetly shows that to some extent they believe they are legitimate but in order not to disappoint their supporters, they publicly disown them.

On 9 November 2007 Steadman Group released opinion polls that showed Kibaki closing the gap on Raila. However, the ODM presidential candidate scoffed at the polls saying they were not a true reflection of the reality. ODM-K summit member David Musila equally casted doubt on them saying there is no way their candidate could be

¹³ 'Latest surveys forecast tight race for State House', www.nationmedia/elelections, Nov 17, 2007.

¹⁴ *East African Standard* December 19 2007

¹⁵ Informant gave interview on condition that he remains anonymous.

polling 11%. On the other hand, PNU, which according to the polls was gaining lost ground, welcomed the polls exuding confidence that Kibaki would win.¹⁶

Opinions are “*ripples on the surface of the public's consciousness*”¹⁷ and therefore shallow and change easily, in contrast to attitudes and values which lie deeper below the surface and are slow to change. Thus, results of opinion polls change over time and shifts in opinion have been recorded many times in many places.

Opinion polling has been so misunderstood and unfortunately maligned by so many Kenyans and criticizing pollsters has almost developed into a national pastime. Since polling is a relatively new concept in the country, the common criticisms many Kenyans have with it are based more on emotional biases, political agenda, and plain ignorance than on a rational rejection of polling based on a thorough understanding of polling methodologies and how polls are actually used in democracy.

Apart from attacking the credibility of pollsters, politicians also questioned their professional training, ethics and objectivity. This has potentially serious implications for the profession of public opinion research.

In the run up to the 2007 elections, most of the negative remarks against pollsters were picked up and incorporated into normal news coverage of the campaign, sometimes uncritically.

As the Election Day neared and opinion polls showed a clear two-horse race contest, the attack on pollsters seemed to have been part of a more general pattern in which those involved in campaigns “cleansed” almost any message that can be perceived as harmful to a candidate's campaign fortunes.

¹⁶ ‘Mixed reaction to opinion poll,’ *Sunday Nation*, November 11, 2007 p. 18

¹⁷ Robert M. Worcester, “Public and elite attitudes to environment issues,” *International Journal of Opinion Research*, Volume 5 number 4 1993 pg 315-334

The developing conventional wisdom appeared to be that every negative message should be quickly countered in the hope that the message is discredited enough to limit its impact. This perceived need to control messages and images in the political market place may have begun early in the campaigns when candidates began using more of a marketing model to get votes, a shift from campaigns based on party machinery and grassroots effort.

A day before Steadman Group released its last poll, ODM issued a statement saying the company planned to release polls whose findings *“have already been tainted by discussions held by senior members of President Kibaki’s campaign team and Steadman staff.”* ODM said such contacts between these two sets of officials undermined the *“cardinal principle of impartiality”* that lies at the heart of a pollster’s credibility. *“Close connections between President Kibaki’s associates and Steadman officials, as well as persistent reports that one of these associates is a director of the company, have dogged Steadman poll results for some time,”* ODM said.¹⁸

On the other hand, PNU declared that Caesar Handa of Strategic Research was one of the architects of Raila’s campaign, while Jerry Okungu of Infotrack was the campaign manager for ODM in Nyanza and one of the ODM’s media strategists.¹⁹

The above statements need to be read against the historical animosity between the Luo and Gikuyu, which largely informed the 2007 voting patterns. The ethnic character of Kenya’s politics has had a profound effect on events such that those that have a political nature seem to be more open to ethnically coded readings. This is especially so given the tendency by politicians to seek narrow power bases in

¹⁸ Orange Democratic Movement Press statement, December 18, 2007

¹⁹ PNU carried half-page advertisements with this message.

the tribe before they can stake claims to broader national leadership.²⁰ Waititu was widely perceived to be backing Kibaki and PNU because of his ethnic background while Okungu and Handa are both Luo and hence perceived supporters of Raila.²¹

Party politics in Kenya are, first of all, the politics of ethnic identity. The change of power in 2002 did not transform that pattern — the change resulted from a reconfiguration of ethnic politics rather than its transformation. Political parties exist primarily as voting machines for “big men” who see a chance to become president and use the ethnic appeal for mobilization of voters. Party programmes and mechanisms of intra-party opinion formation play a negligible role. This explains the fluidity in party political spectrum and the struggles for power within the parties, largely based on ethnicity.

The public discussion of opinion polls is not always very well informed. Discussing the authenticity of opinion polls, one Karanja Gitau from the United States wrote: *“It’s not accurate because they interview less than 3000 voters whereas we have more than 14 million voters. $3000/14 \text{ million} = 0.0002143 = 0.021 \text{ percent}$. If polls can work in USA, it doesn’t mean they’ll be accurate in Kenya. We use ballot paper/boxes they use electronic voting.”*²²

Such sentiments were widely articulated by the general public. *“I don’t think that the polls are reflecting the situation on the ground. There is no way any fair poll could put Raila and the president that close. The smallest difference should be 20 points, Raila being ahead.”*²³

This shows that most politicians and the general public do not

²⁰ Wa-Mungai, Mbugua (2007) ‘Tusker Project Fame: Ethnic States, Popular Flows’, *Journal of Eastern African Studies*, 1:3, 338 – 358

²¹ All pollsters however voiced their credibility and non alignment with any political party.

²² www.nationmedia.com/elections, December 7, 2007

²³ Interview with Caroline Kariuki, a registered voter.

acknowledge the specific methodological techniques that make modern polls so accurate and reliable, or how they can be employed to promote a healthier, more responsive democratic society. Pollsters agree that polls can correctly predict the outcome of a general election, but only if the research adheres to strict scientific methods to minimize bias and errors.

It is thus imperative that the private sector forms an ombudsman who ensures what is presented as poll results are correct and has passed the rigorous professional requirements. Such a body would also educate the masses on the politics of polling as well as arbitrate in case of disputes.

Such a role is spelt out in the *Statistics Act*, which requires pollsters to submit not just their plans to conduct the survey according to Section 18(1) but also submit such results to the KENBS as provided by Section 19. While the Kenya Government may have had good intentions enacting this clause, it is vital that the private players regulate themselves. This will erase the illusion that the Government is trying to muzzle them from releasing poll results which are against it.

Since opinion polling will play such an important role in Kenya's political future, it is important that necessary measures are taken to not only educate the public on the role of polls, but also establish mechanisms of reining in rogue pollsters.

Conclusion

This paper has traced and discussed the place of opinion polling in Kenya. It has noted that due to the censorship prevalent in the KANU era, conducting opinion polls is a relatively new industry.

During the 2007 general elections, there was a remarkable sudden

increase of opinion polls, which left many Kenyans asking questions regarding authenticity of data. As such, it is necessary that the industry urgently takes steps to regulate itself and get rid of illegitimate pollsters.

This is more important noting that opinion polls can influence perception of a particular candidate and that is why those leading welcome the surveys, with those trailing dismissing them. It is only by having effective pollster watchdogs that Kenyans can tell which pollster actually predicted the results within the stated margins of error.

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PART II: VIOLENCE IN THE POST-ELECTION PERIOD

FROM RIGGING TO VIOLENCE:

Mapping of political regression

*Bernard Calas**

Mapping of the elections and the post-election violence which took place in Kenya at the beginning of 2008 allows certain parties to initially qualify it through an analysis that combines both ethnicity and violence. The ethnicising of violence does not seem to be clear while the localization of violence in the country is more often a result of land issues rather than direct ethnic antagonism. In contrast, crime in urban areas has taken on the form of unequivocal ethnicisation.

On 27 December 2007, the 14 million Kenyans registered on the voters' roll were called upon to vote three times, casting three different ballot papers in three separate ballot boxes to elect their President, one of their 210 MPs and their local councillor.¹ The main presidential candidates were the incumbent Mwai Kibaki, opposition leader Raila Odinga — son of father of opposition Oginga Odinga — and their challenger Kalonzo Musyoka. The importance of ethnic identification in electoral allegiance and choice as well as in the Western view of African politics makes a compelling case to state from the offset that the first candidate is a Kikuyu from Central Province, the second a Luo from Nyanza Province and the third one is a Kamba from the south of Eastern Province.

The main stake in this election was whether voters would re-elect Kibaki, who had brought great hope to the 2002 elections. During his term in office, there was disillusionment over his aspiration to new

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¹ This paper was written using information gathered from interviews and observations in Kenya, as events of the end of year 2007–2008 unfolded.

politics, improve social and economic conditions of the majority and inject morals into political life, especially due to a maintained high level of corruption and worsening inequalities as the country experienced rapid economic growth. As early as during the 2005 constitutional referendum, which the opposition-backed “No” campaign won, voters had opted to punish the disappointing government personified by an ageing and a stuttering president.² The second stake in these elections was whether parliamentary elections would determine the presidential choice, giving the President a parliamentary majority. Three parties, or rather three nebulous supporters were in the race: Orange Democratic Movement (ODM) behind Raila Odinga, Party for National Unity (PNU) behind Mwai Kibaki and ODM-Kenya (ODM-K) behind Musyoka.

The three phases of the Kenyan crisis—voting, violence and socio-spatial adjustments—constitute an event which refutes the idea that Kenya since the 2002 elections, Kenya had opened up a new chapter of “*democracy*” (characterized by failed elections, sealed with political and ethnic violence and political manipulation of the second period of the Moi era) to become an “*emerging democracy*”. Furthermore, one may wonder whether the January–February 2008 ‘events’ were a political split with lasting consequences or whether they are as old as Kenyan politics, periodically rocked by violent fluctuations. An attempt to answer this question amounts to interpreting the meaning of the events with regard to the past and in the light of socio-spatial developments which it entails. Secondly, a parallel will be drawn to electoral mapping and violence mapping that followed the elections, in order to attempt to establish spatial figures, which, although being temporary and partial, is indispensable.

² A. Oloo, “Contested terrain: the politics of citizenship and constitutionalism in Kenya” and L. Maina, F. Waswa and S. Waiyego, “Pitfalls in constitution-making in Kenya: experiences from Bomas and the 2005 national referendum”, in H. Charton and C. Médard (eds.), *Annuaire de l'Afrique orientale 2005*, Paris, l'Harmattan, 2007, pp. 59-101 and 103-127 respectively.

Sketch mapping of the electorate

Generally speaking, voter turnout was 70% and there was no significant difference in the turnout for the three elections, although the turnout for the presidential election was slightly higher, either due to rigging or due to higher stakes. The highest turnout (high figures between 85% and 95%, which undoubtedly indicated rigging) was registered along the shores of Lake Victoria — in Luoland, and in the western parts of Central Province, in Kikuyu land. The lowest turnout was registered in the largest urban centres, Nairobi, Mombasa and Nakuru. Most of the other constituencies registered low voter turnout between 60% and 70%. An analysis of the meaning of the turnout is rendered difficult by rigging and the difficulty in pinning this down. The election rigging, which was massive, was however, neither systematic nor unilateral and it cannot be said for sure that this altered the final result of the presidential election apart from further delegitimizing government, politics and the regime in the eyes of Kenyans. The frauds particularly wanted to influence the result of the presidential poll whose stakes were a determining factor on the entire general election.

Four main types of irregularities can be identified. The first three occurred mainly outside Nairobi and influenced the results at the local level while the fourth one took place in Nairobi at the Kenyatta International Conference Centre (KICC) tallying centre. This latter influenced the national outcome of the presidential poll. The first type of irregularity took place during the voter registration exercise; as a result, there were up to 15% dead voters registered in the roll.³ The second type of electoral fraud took place in ethnically homogenous constituencies. Inflated results brought the voter turnout to figures

³ The voter registration exercise merits a whole paper on its own. Between 2002 and 2007, 4 million new voters were registered, which well over the natural increase in the number of voters. These were the fruits of good work by human rights NGOs and those working to promote democracy. The increase was mainly of young voters.

higher than 100%.⁴ In constituencies with low levels of literacy, on the fringes of “arable Kenya” (Coast and North-Eastern provinces, Maasailand, North Rift), there were suspicions of ODM poll agents being compromised by government agents and massive vote-buying was reported.⁵ Finally, some results were altered, sometimes clumsily, during transportation between local polling stations and the national tallying centre and collation of results at KICC.⁶ These irregularities had the heaviest impact on the final result of the presidential poll. By 30 December 2007, ODM and PNU observers at KICC unanimously agreed that the irregularities affected 44 constituencies. The irregularities occurred mostly in the country’s most populous districts as the map in the annex shows. There is a possibility that all the irregularities influenced 3% per cent of the vote while the margin separating Kibaki and Odinga, giving victory to the former, was at least 232,000 votes, an equivalent of 2.3% of the votes cast.

Since the electoral fraud influenced the presidential poll result, the parliamentary elections seemed to be a better reflection of public opinion. A total of 207 MPs were named (elections in three constituencies having been cancelled) and on 15 January during the election of the National Assembly Speaker, 105 MPs carried the day after three rounds of voting in favour of the ODM candidate, Kenneth Marende. Beyond this short-lived victory for ODM, the elections appeared to totally overhaul the political class and dismissed more than half of the incumbent MPs. To an extent, one could say there was a real generational transition and new political landscape in Kenya. Younger

⁴ *The Standard* (Nairobi), 10 January 2008.

⁵ Refer to Kenya Elections Domestic Observation Forum, “Preliminary statement and verdict of Kenya’s 2007 general elections”, Nairobi, 31 December 2007. At a seminar organized by the British Institute in Eastern Africa at the premises of the Institut français de recherche en Afrique (Ifra), David Throup reaffirmed this supporting evidence.

⁶ Koki Muli, independent observer for the Institute for Education in Democracy, who was based at the KICC, personal statement, Nairobi, 30 December 2007.

people, newcomers and women emerged at the expense of a long list of old hands in politics (such as Nicholas Biwott and Simeon Nyachae) and descendants of prestigious political dynasties (including the three sons of former President Moi, who all lost). However, some of the newly elected were not political novices since they were in fact losers in the 2002 elections. Therefore, even though the impression of overhaul was real, it remained to be qualified. This development took place in all regions and it was as true to ODM as to PNU. Thus in north Rift, the protest vote wave swept in 12 new faces in 19 constituencies (N. Biwott, former third in command and Minister for energy in the Moi regime, was defeated by a 38 year-old). In Central Province, ministers who enjoyed support from leading figures like Lucy Kibaki (the president's wife), including John Michuki, also lost. This also affected opposition barons in Luoland, along the coast and in Kisiiland.

The partisan allegiance of the elected leaders seemed to be along real regional bastions and pointed to an ethnic poll. Indeed, the map of the parliamentary election results showed contours of three consistent and relatively ethno-politically homogenous spaces: western (virtually Luo) ODM, central (virtually Kikuyu) PNU and allies, as well as central-eastern (virtually Kamba) ODM-K. For their part, Nairobi and Mombasa cities largely voted ODM.

However, talking about ethnic votes is both accurate and somewhat simplistic. Beyond the presidential electoral fraud, Kibaki harvested nearly 50% of the votes while the Kikuyu (7 million) are only 22% of the population. This means that more than half of his electors were not Kikuyu. Their neighbours in Mount Kenya, the Embu and Meru (2 million or 5% of the Kenyan population) are allies of the Kikuyu. Generally, it can be said that despite the Kikuyu voting overwhelmingly for Kibaki, all those who voted for Kibaki were not Kikuyu. A similar logic applies to Odinga. The Luo are only 13% of

the Kenyan population yet Odinga garnered almost 50% of the vote. Although the Luo voted overwhelmingly for ODM, not all those who voted ODM were Luo.

The analysis according to coherent and solid political blocs could also prove to be an illusion. Indeed, the ODM, and to a larger extent, the presidential coalition around PNU and even ODM-K, were fragile and volatile outfits. The nomination and primary polls episode was significant in this matter. In October–November 2007, the parties held primaries to nominate their parliamentary candidates. Apart from some targeted incidents of violence, particularly against candidates, these primaries gave rise to a real musical chain of party allegiance. Some politicians changed parties several times because they had been denied nomination. This was proof of how unreliable party membership was and one could switch very quickly depending on the circumstances. The idea that the opposition could rely on its parliamentary majority to impede the president's initiative appeared even more unrealistic because ten of the newly-elected MPs from western Kenya belonged to NARC (National Rainbow Coalition – Kenya), President Kibaki's party until PNU was formed and they would obviously be under intense pressure from the presidential camp to "cross the floor".⁷ The about-turn of the second runner-up in the presidential poll, K. Musyoka, who suddenly swore allegiance to the government by accepting the vice-president's post in January, only confirmed this view of Kenyan politics, for the least "pragmatic". The revolt by ODM-K officials during the nomination of MPs (10 MPs are nominated by the president just before the opening of the first parliamentary session after they are proposed by party leaders and according to the party's strength in parliament) confirmed this serious instability within political parties. They are vulnerable to break-ups at the slightest excuse or pressure (corruption, threats...).

⁷ An MP can change political party during one term without consulting his constituents. By so doing, he switches sides in the House and thus physically crosses the floor.

In reality, the spatial distribution of votes emphasizes the combination of several factors which contributed to the ODM wave and the resistance to a consequent bloc brought about by the alliance between PNU and ODM-K.

The identity vote inevitably played out in Luo, Kikuyu and Kamba land. Indeed, each of the three main political leaders in the election, Kibaki, Odinga and Musyoka — as well as their parties — PNU and its affiliate parties, ODM and ODM-K, won in the respective regions. The consistency between the presidential poll, party allegiance, high voter turnout, constituency contours and ethnic identity make it possible to talk about electoral strongholds and even political territories.

In the Western Province, Luhyaland and in Meru and Embu, Eastern Province, it is evident from the voting patterns that the process was more regional than identity-linked. In fact, what led the Luhya to vote for Odinga and ODM while the Embu and Meru voted for Kibaki and the PNU was the feeling of a community socio-spatial exclusion concerning the Luos, and on the other, the convergence of interests and history concerning the Kikuyu. The feeling is certainly partly underpinned by the spatial unity between the two sides.

The protest and generational vote, which was higher in urban centre played out in favour of the Orange Party. The support of a large number of Nairobi youth — especially in Nairobi Eastlands slums like Embakasi, which is largely but not exclusively inhabited by the Kikuyu — explains ODM's success in six out of the capital's eight constituencies. The same line of reasoning explains the extent of Orange victory in Mombasa.

Ulterior motives over land played out elsewhere, especially in the Rift Valley. Here, the desire to prevent the president, who was perceived as the potential bearer of a threat over land, from remaining in office, was one of the main reasons the Kalenjin people voted ODM. This

over-determination of the vote by old land stakes explains the failure of the marriage of convenience between Moi and Kibaki.⁸ Indeed, this alliance was based on the idea that Moi's support to Kibaki would be enough to placate Kalenjins over Kibaki's ethnic origin. Kalenjins are the majority in west and north Rift and consider the Kikuyu, led by the(ir) President, as land grabbers. However, Odinga garnered 65% of the vote in the Rift Valley (against Kibaki's 33%) and 31 out of the 49 parliamentary seats went Orange. In return, on the Laikipia plateau, the pioneer front of Kikuyu settlers,⁹ in Naivasha, Oloitoktok and Kajiado districts, in eastern central Rift Valley, the fear of losing recently acquired land and the identity reflex favoured the Kibaki vote and the election of pro-government candidates.

Finally, in Coast Province, the debate around *majimbo* (which should be understood not as "federalism" but as "regional preference") — explicitly advocated for by Odinga and equally criticized by Kibaki — was at the core of the campaigns and the voting.¹⁰ In this region, the MoU signed between Odinga and the Muslims during the campaigns also contributed to rallying some voters in support of ODM.¹¹ But the *majimbo* issue played out differently elsewhere, especially in the Rift Valley and in North-Eastern Province where it was seen as a means of evicting non-native minorities, particularly the Kikuyu.

In a number of areas, the generational dimension of the election was finally expressed clearly. Thus, in Kisii land, where the same number of MPs was elected on both sides, scenes of violence during riots at the beginning of January involved pro-ODM youths hunting

⁸ Refer to J. Oucho, *Undercurrents of Ethnic Conflict in Kenya*, Leiden, Brill, 2002, especially in pp. 132-170, as well as Claire Medard's paper in this collection.

⁹ Refer Y. Droz, *Migrations Kikuyus, Des pratiques sociales à l'imaginaire*, Neuchâtel, Institut d'ethnologie, Paris, Maison des sciences de l'homme, 1999.

¹⁰ Concerning *majimbo*, refer to P. Mutahi, "Political violence in the elections", in H. Maupeu, M. Katumanga and W. Mitullah (eds.), *The Moi Succession Election 2002*, Nairobi, Transafrica Press, p. 70.

¹¹ Refer to Anne Cussac's paper in this collection.

down and threatening their elders whom they blamed for supporting Kibaki, considered a dishonest elder.

On the whole, support for Odinga and for his pro-*majimbo* political plan – the only real stumbling block between the two parties — the rejection of Kibaki and his government (“We will punish him”) and the identity proximity (“He is from among us”) were the main driving forces in the electoral choice.

History and geography of post-election violence

The results of the elections were still unknown towards the end of December 2007 when the delay in tallying and growing rumours of rigging triggered off an escalation of violence. These events were relayed by the media to the Western world as the New Year was ushered in.¹² Two months later, these events resulted in 1,000 deaths and 300,000 IDPs, according to official figures. The mapping of the violence largely arise from the same logic as the violence, which can be identified by isolating the various phases from which the violence developed from the end of December 2007 and the end of February 2008.

First, between the end of December and mid-January, post-election frustration was vented in riots that inflamed constituencies that the opposition had won: Luoland, especially its capital Kisumu, Mombasa and parts of Nairobi inhabited by the Luo, starting with the sprawling Kibera slums, and to a lesser extent Kawangware slums, and some pockets in Mathare slums in the east of the capital. Between Nakuru and Eldoret, especially around Turbo and Timboroa, and the rural areas within the Eldoret–Nakuru–Kericho triangle, the violence took

¹² For mapping of the violence, refer to the Unosat web site, United Nations specialized agency for the handling of satellite images, www.unosat.org, or Data exchange platform for the Horn of Africa web site, <http://depha.org>. On 4 January 2008, Unosat published a series of images of arson captured via satellite between 29 December 2007 and 2 January 2008 in the Rift Valley.

the form of peasant uprising, which was undoubtedly course stage-managed by local politicians and prominent figures.¹³ The violence first targeted Kikuyu minorities and to a lesser extent the Kisii minorities. However, while in Kisumu spontaneous riots led to the destruction of entire streets without a single loss of life (the violent deaths were caused by a disproportionate reaction of the security forces in clashes that lacked the ethnic dimension), pogroms and uprisings elsewhere were accompanied by violent deaths. A case in point is the arson attack on a church in Kiambaa, an area in Eldoret, where about 30 people met their death.¹⁴

Nevertheless, contrary to what the international media led the world to believe, not the whole country was in a state of unrest. Riots, looting and murders mainly took place in areas with high population density: western Kenya, mainly in Luoland, settlement schemes in former White settler highlands of the Rift Valley,¹⁵ some parts of the intra-urban slums (and not the populous slums in the outskirts) and their immediate neighbourhoods in Mombasa and especially Nairobi. An assessment of this as a reversal of the security map — usually it is the regions in north-eastern and northern Kenya that are reputed for insecurity — would be attractive if the localized nature of the violence was not so clear. Thus, in Kibera for example (700,000 residents on 10 km²), where the violence received most media coverage, the Soweto 5 and Lindi sections were not affected by any violence. Similarly, although there clashes pitting gangs from poor sections like Kisumu Ndogo, Katwekera and Kianda against militias from estates

¹³ Human Rights Watch, *Ballots and Bullets. Organized Political Violence and Kenya's Crisis of Governance*, HRW report, vol.. 20, No. 1, March 2008.

¹⁴ The tragedy took place on 1 January 2008. It was covered by all the media in the world and it caught many people's attention. Refer to Human Rights Watch, *Ballots and Bullets...* op.cit., p.14.

¹⁵ Concerning these issues, refer to P. Ndung'u, *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*, Nairobi, Government Printer, December 2004.

like Olympic, Ayany and Fort Jesus, the neighbouring Karanja estate, which is inhabited by the small well-organized minority Nubians (descendants of Sudanese soldiers who served in the colonial army) was spared from chaos; the rest of the sprawling slum also remained calm. These events of the second half of January 2008 shows the slide of political violence into social violence with criminal actors, gangs that were prompt in taking advantage of the slightest lapse in vigilance of the police to operate in broad daylight. This descent in some cases began as early as the beginning of January.

In the third phase, from the end of January 2008, urban riots in Kisumu and Nairobi gradually died down and the violence was transferred to other areas where different ethnic communities cohabited; Nakuru town (25 January) and its suburbs, then the Naivasha horticultural belt (27 January) and finally the north-western suburb of Nairobi (29 January) and the large coffee plantations in Central Province. In these areas, the violence was in the form of targeted revenge against minorities from western parts of the country, which was instigated by some Kikuyu politicians, with the support of militias like Mungiki¹⁶ among others. The horticultural farms in Naivasha, the Kenya Agricultural Research Institute laboratories in the outskirts of Nairobi and the Kenya Forestry Research Institute in Muguga, were targeted for ethnic cleansing.¹⁷ This organized violence coincided with the assassination of two opposition MPs — Embakasi and Eldoret South. The latter was killed by a policeman claiming to be the husband of his concubine!¹⁸ These also coincided with personal threats against some of the most visible human rights activists. All these happened while talks to resolve

¹⁶ H. Maupeu, "Mungiki et les élections. Les mutations d'un prophétisme kikuyu", *Politique Africaine*, pp. 117-137 and "Le rôle des institutions religieuses", *Cahiers de l'Afrique de l'Est*, No 37, 2008, pp. 129-160.

¹⁷ Refer to International Crisis Group (ICG), *Kenya in Crisis*, Africa Report No 137, Nairobi, 21 February 2008.

¹⁸ On these two cases, refer to daily editions of *Daily Nation* and *The Standard*, Nairobi, 29 January 2007 – 2 February 2008.

the crisis between the government and the opposition continued in the Kenyan capital under the chairmanship of Kofi Annan.

During the entire period, clashes between peasant communities persisted and spread to the Nakuru–Eldoret–Kericho triangle, albeit in a more localized manner. These were mainly triggered by Kalenjins (mainly Nandis and Kipsigis) often degenerating into border battles, resulting in clashes over administrative borders between cosmopolitan districts. This was very clear between Kisii and Kalenjin land.

Therefore, the violence did not have the same modalities everywhere or at the same time. Behind the settling of scores, intimidation and police overzealousness, which were seemingly intentional (a good number of dead bodies had bullet wounds on the back¹⁹), there was a mixture of political exasperation and xenophobia mainly targeting minority groups considered “outsiders”.²⁰

In urban centres, violence affected small traders, especially the Kikuyu, while in the rural areas, its target was small “outsider” land owners. First, the violence was accompanied by looting and secondly, it involved destroying homes of “outsiders”, who in some cases had been residents since the 1960s. This was aimed at reducing their title deeds and discouraging them from ever returning. The relationship between the victims and their aggressors were different depending on whether the violence occurred in urban centres or rural areas, but in the rural areas, what was often shocking was that the attackers knew the people they had targeted. In many cases, these were their neighbours of longstanding. It was difficult to avoid drawing similarities with the violent episodes that rocked countries in the Congo–Nile crest, Rwanda and Burundi. In campaigns carried out in western parts of

¹⁹ In mid-January, Raila Odinga led delegations of international journalists, including BBC journalists, in a visit to the Kisumu mortuary, with a view to showing them the bullet wounds on the bodies.

²⁰ Concerning the issue of being native or outsider linked to *majimbo*, reference is made to Anne Cussac and Jérôme Lafargue in this collection.

the Rift Valley, “Kalenjin” warriors, who swung into action with some degree of preparation and consultation, triggered the violence. These militias sometimes occupied towns — Eldoret for example — police stations, schools and churches, where their targets took refuge.

Initially, in the urban centres, the violence was often spontaneous, with the hallmarks of political riots. These brought together groups of young men. Secondly, the violence often involved sects or gangs, which sometimes carried out serious, highly localized ethnic cleansing, especially in Mathare. For a change, in a departure from what happened in 1982 and 1990, the central district of Nairobi did not experience any destruction. Despite employers’ fears and traffic jams (linked more to lack of means of transport and police roadblocks than to the violence itself), life went on normally for the whole of the crisis period. Thus, many decades of urban segregation, police tactics and election strategies confined the violence to the poor districts.

Territorial consequences of the post-election violence

The immediate effect of the violence was the suspension of economic activity which had already slowed down during the vacation period at the end of the year.²¹ The violence compartmentalized space, reduced mobility, left the streets and especially the markets empty. The streets were abandoned for security forces while markets were at the mercy of looters and traders’ militias. The constrained mobility was one of the consequences of the crisis. On the roads, there was an increase in the number of barriers erected by vigilantes or by the police, which were turned into toll stations and roadblocks,²² points for predatory activities and targeted violence. These barriers divided the country into two mobility spaces: on the one hand, the east, where there was

²¹ For more on the economic consequences of the initial days of the crisis, refer to R. Porhel, ‘The economic consequences of the political crisis’, in this volume.

²² ‘This more aggressive term significantly replaced the term “checkpoints”.

normal movement, and on the other hand, the west, towards which all movement was virtually banned, especially for transporters identified as Kikuyu. This led Ugandan entrepreneurs, whose access to the sea had been cut off, to insist that the Kenyan government secures the Mombasa–Nairobi–Nakuru–Malaba–Busia corridor. These road barriers mobilized young rebels, who seemed to be insensitive to calls for calm by their elders and local political leaders.

On 15 January 2008, 250,000 people were classified as internally displaced and received at police posts, schools, show grounds and stadia while 6,000 others, three quarters of which were Kikuyus, fled to Uganda for refuge. At the beginning of February, following the revenge attacks around Naivasha, the Kenya Red Cross Society placed the figure of internally displaced people at 300,000. They had been offered shelter at police stations, prisons, some schools and missions, and in make-shift camps. Out of these 300,000 internally displaced people, 21,000 were based at the Eldoret camp set up at the show ground, 37,000 were based at the four camps in Kitale, 42,000 were based in the Molo camp, 52,000 in Nakuru and 16,000 in Naivasha. By the end of February, the Red Cross estimations were 270,000 internally displaced in camps and 230,000 received by other families.²³

The geography of displacements can be generally identified. The majority of internally displaced people came from settlement schemes on the western borders of the Rift Valley, Uasin Gishu and Nandi districts, areas where agricultural employees live in Naivasha, Nakuru and Thika. The displaced people were small scale farmers, generally Kikuyu and Kamba, sometimes Kisii, who had settled for one or two generations, agricultural employees and junior Luo or Luhya civil servants settled in the dynamic areas in Central Province and eastern Rift Valley. All of them wanted to go back to their “villages of origin” or “ancestral land” — those from western Kenya even swore never to

²³ The Kenya Red Cross Society regularly updates its figures. Refer to www.kenyaredcross.org

come back while holders of title deeds, mainly Kikuyu, very intent on coming back, to the land they now considered theirs. This situation led to a form of “Kikyunisation” of the junior staff in the horticulture farms around Naivasha and in Central Province. Luo, Luhya and Kalenjin migrants in the farms were replaced by Kikuyu driven out of Maasai land, especially from Narok District to the south.

In Nairobi, during the weeks that followed the riots, tenants in populous residential areas (Kibera, Eastleigh, Mathare, Kangemi, Kawangware) were evicted by their landlords if they did not share the same ethnic identity. In the urban areas, social interaction led to ethnic and regional agreement between the tenants and the landlords at houses and residential estates. In the slums where the population is mixed, like in some parts of Mathare, gangs polarized space, leading to clear community fragmentation, with areas for Kikuyu or those from Central Province and neighbouring Kamba land and areas for the Luo or those from western Kenya.

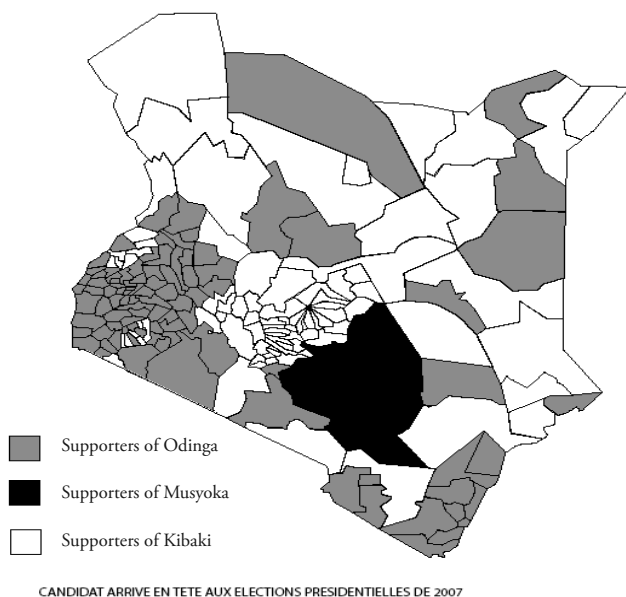
Finally, a certain number of internally displaced people found refuge not in their “ancestral” land — which they sometimes only knew by name and where they were not always welcome — but in the Nairobi slums, which had to suffer under further congestion. There was therefore aggravation of urban poverty during the two months of crisis. Humanitarian actors unanimously agreed that this trend could persist and affect the urban landscape in the long-term.²⁴

This spatial evolution towards increased space fragmentation at all levels is a demonstration of a brutal re-ethnicisation of social and territorial relations. The public space, ideally perceived as relatively neutral, has brutally receded, become fragmented and territorialized, in some cases to the extreme. The election and its mismanagement through rigging was sometimes simply the trigger for violence whose

²⁴ Round table of humanitarian actors at the French embassy in Nairobi, 19 February 2008.

common denominator remains the classification and demonization of the other as the foreigner.²⁵

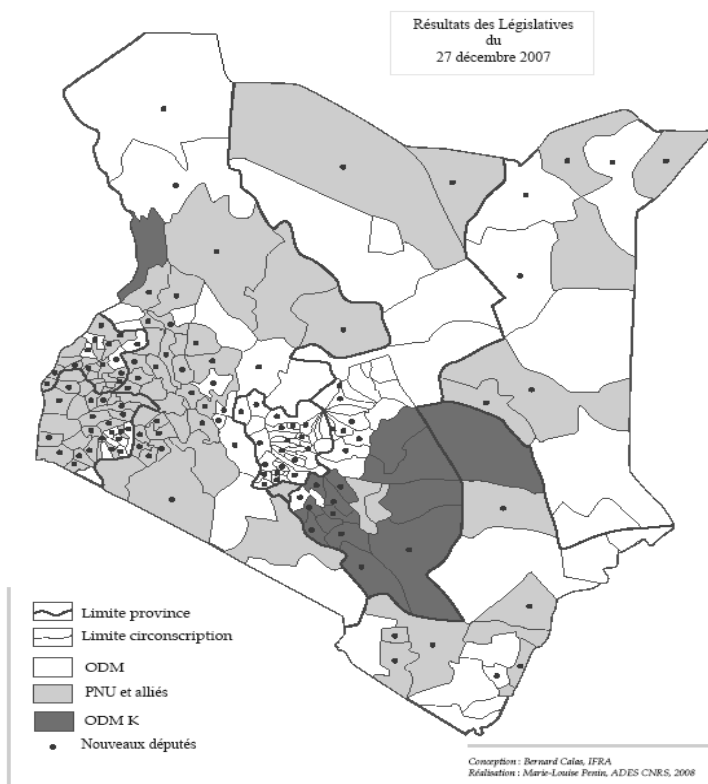
Map 1: Leading candidates in the 2007 presidential elections



²⁵

For more on the subject of xenophobia, refer to C. Médard, in this volume.

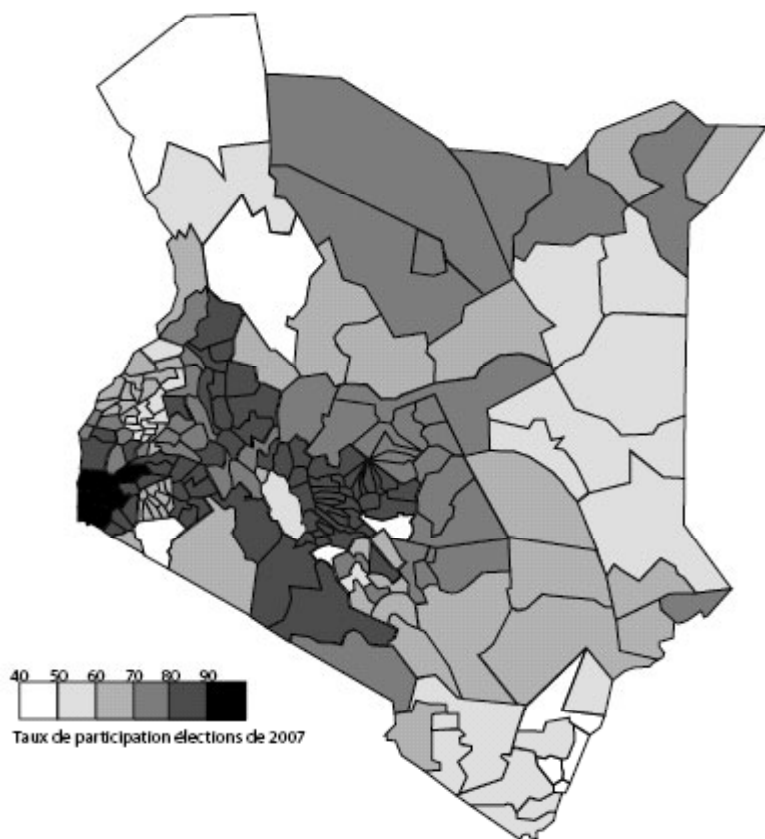
Map 2: Results of the legislative elections of 27 December 2007



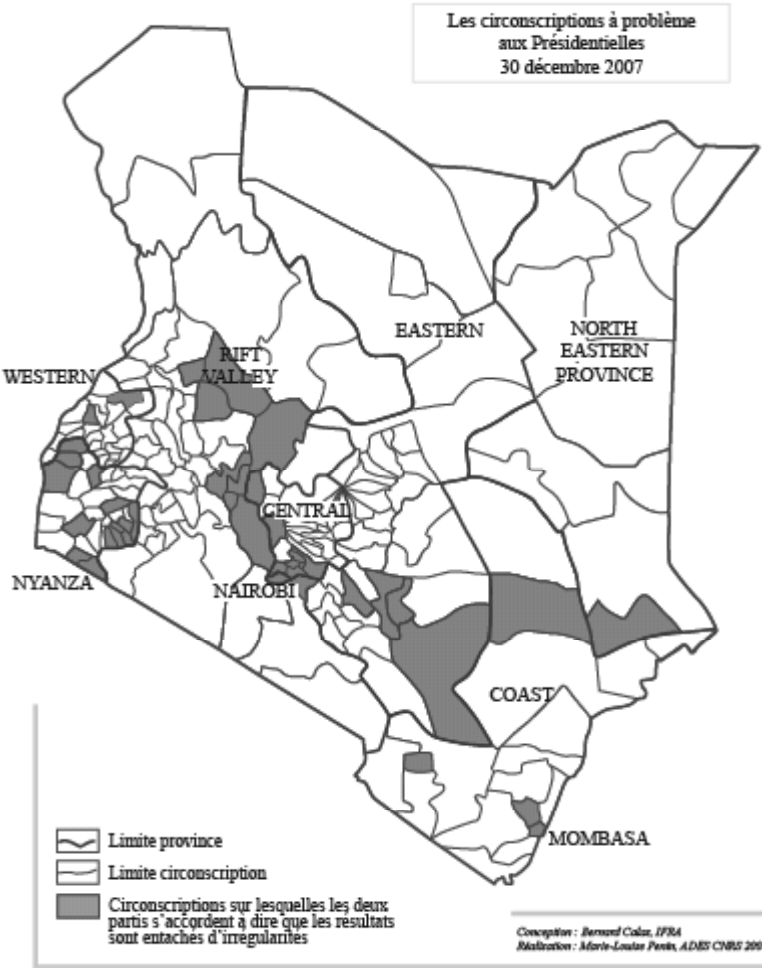
Conceived by Bernard Calas, IFRA;

Produced by Marie-Louise Penin, ADES CNRS, 2008

Map 3: Rate of participation in the 2007 elections



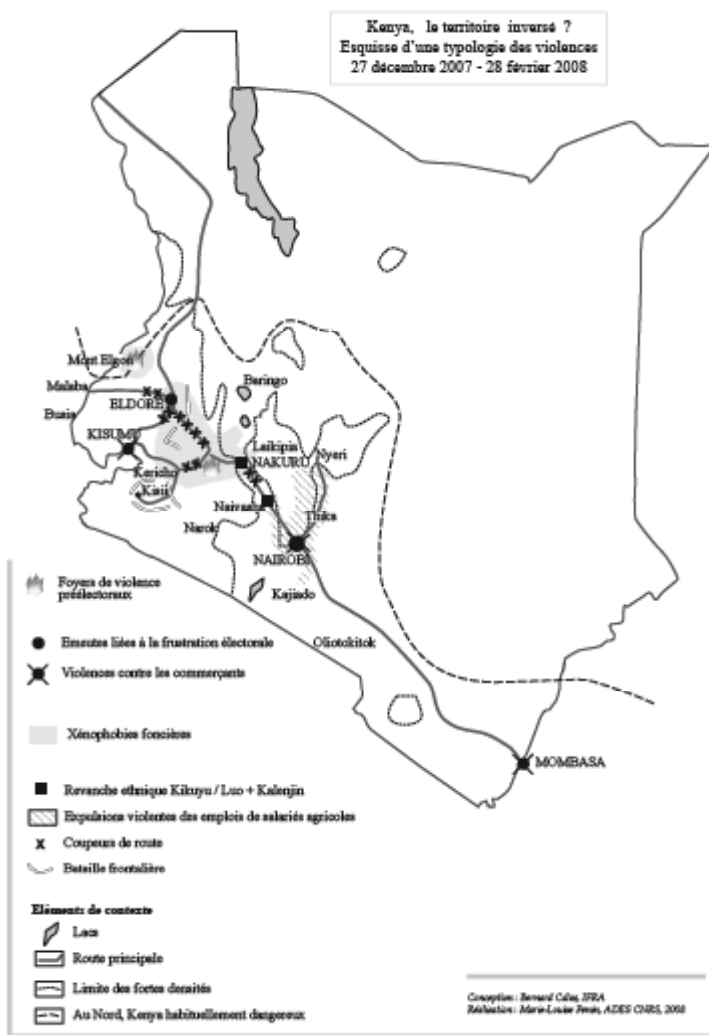
Map 4: constituencies with disputed results in the presidential elections, 30 December 2007



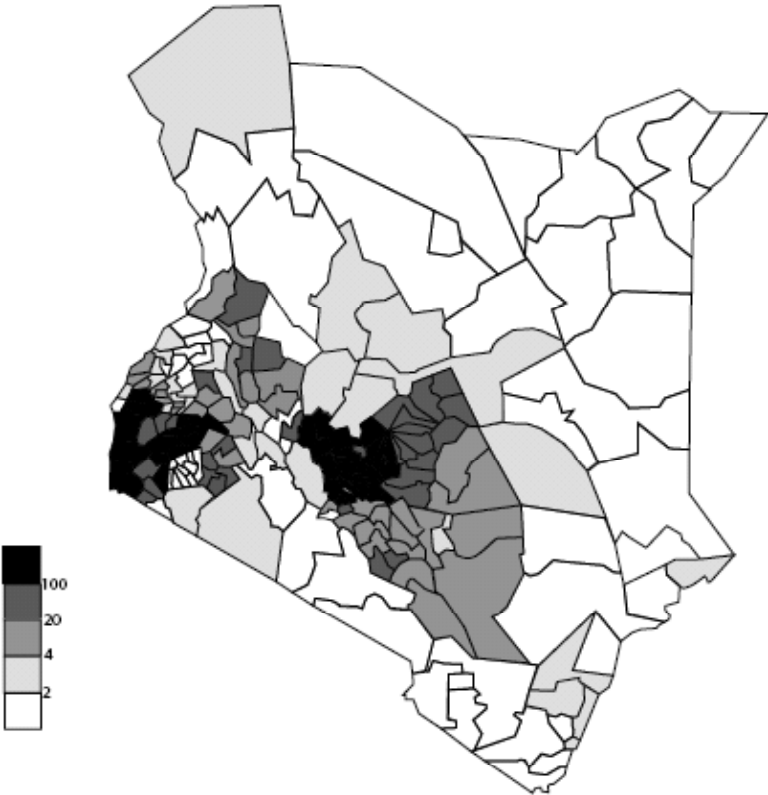
Conceived by Bernard Calas, IFRA;

Produced by Marie-Louise Penin, ADES CNRS, 2008

Map 5: Kenya—an inverted land? A sketch of the violence experienced from 27 December 2007 to 28 February 2008



Map 6: An indication of electoral hegemony



Indicateur d'hégémonie électorale
Taux par lequel il faut multiplier le nombre de voix du second candidat
pour obtenir le nombre de voix du premier candidat

The rate by which the number of the votes obtained by the second candidate should be used to get the number of votes of the leading candidate.

REVISITING POST-ELECTION VIOLENCE

*Hervé Maupeu**

“Even rigging requires a little intelligence”

(Mwai Kibaki, September 1988)¹

“The ultimate expression of sovereignty largely resides in the power and capacity to say who can live and who must die”

(A. Mbembe 2006, p. 29)

For some time now, optimism over the third wave of democratization has died out. An increasing number of authors remind us of the adverse effects of electoral democracies that increased in the beginning of the 1990s. At the time, many hoped that a combination of development and democracy, along with liberalism would lead to peace and general prosperity. In many countries, however, it is violence, ethnic cleansing and authoritarian reactions that seem to be the order of the day.

The conflagration of violence that Kenya experienced between December 2007 and March 2008 was surprising, especially because Kenyan democracy was viewed as the most successful in the region, particularly after the 2002 political transition. Moreover, Kenya and Tanzania were the only countries in East Africa not to have undergone any major armed conflict. At least they had not experienced devastating civil war like the rest of their neighbours. Kenya's political culture had certainly for a long time been more violent than Tanzania's.

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¹ Daniel arap Moi regime had tried to evict him from the KANU branch chairmanship in his Othaya Constituency following rigged elections.

Nevertheless, social violence had escalated in Kenya since the return of multi-party politics and the spread of non-regulated market economy. Thus, Amy Chua's general contention that "*the worldwide spread of the free market and democracy is an important cause of ethnic violence, a factor that is aggravating hate between communities throughout the non-western world*"² seems to be a convincing illustration in contemporary Kenya. This view, largely shared by anthropologists such as Arjun Appadurai and journalists such as Robert D. Kaplan,³ compels us to think about the particular nature of capitalism in this part of Africa as well as the form of democracy that has lately established itself in order to understand the mechanisms that lead to violence. In this case there were serious repercussions (close to 1500 deaths and 300,000 displaced persons), commonly portrayed as pitting ethnic communities against each other.

The 2007–2008 electoral violence will be discussed by first introducing the main analytical paradigms that gave rise to fear of political violence in the multi-party era in Kenya. This means focusing on the political psyche in one part of Kenya, the Rift Valley. The land policies established by the colonial and post-colonial systems under regimes that employed different strategies created dynamics of exclusion, which are expressed within a context of electoral democracy and capitalism among cronies. Until the last general elections, the deadly effects of this ethno-nationalism had been largely confined to the Rift Valley. However, these mechanisms now tend to contaminate the whole country, notably through inter-community relations in towns.

² A. Chua, 2008, p. 22.

³ A. Appadurai, 2007 ; R.D. Kaplan, 2000.

PARADIGMS FOR ANALYSING THE 2008 ELECTION VIOLENCE

Three months after the crisis began many experts on Kenyan politics had already made analytical arguments which will probably be analysed in future academic papers. The speed with which views were expressed is unusual in this field.⁴ It certainly corresponds to advancement in political science that is adapting to new forms of communication. The various types of media seek insight from researchers and internet websites, particularly current platforms that make more complex expression possible than interviews with journalists. This is the particularly the case in *Open Democracy* that seems to be the website of choice for most Kenyan experts.

The interpretation of the Kenyan crisis was varied, questioning the majority syndrome of the Western media that was unanimous in a voyeuristic fascination they portrayed as irrational barbarism. However, as explained by Madeleine Bunting, the illustrious Guardian columnist, “*The violence in Kenya may be atrocious, but it is not ‘unfounded savagery’*.”⁵ The tendency not to search for the social (or historical) causes of this violence would be less attributable to a certain level of intellectual laziness than to unconscious racist clichés based on how the North views countries in the South. Academic analyses inoculate us from this danger. Obviously, their approaches vary but all things considered, they are mostly complementary.

The election violence led to several studies in Kenya. These were mostly carried out by human rights NGOs, which are very well-

⁴ The Rwandan genocide led to a plethora of reactions from academicians but after a long period. The conflicts in Sierra Leone or in Liberia also led to rather delayed analyses.

⁵ 14 January 2008. The sub-title of her article clearly the basis of her criticism of the Western media which depict the violence in the Southern countries: “*The exotic African fantasy depicted by Westerners shows that we have failed to understand the real reasons behind the conflicts in developing countries*”.

established in the country, and had interest in the topic. From the social studies point of view, they made the notion of 'election violence' appears to be an operational concept, especially when they defined it precisely and in a way that made relevant analysis possible. The Central Depository Unit's (CDU) definition is one of the most interesting approaches. It views electoral violence as

Any act or set of acts that harm or threatens to harm individuals or groups of people, to cause some damage to property; if the acts or the sets of acts are aimed at or have the effect of manipulation on the choice or the election results. The damage caused can be physical, psychological or both. Election violence can occur before, during or after an election.⁶

In their approach, these activists do not distinguish pre-election violence from post-election violence. Their definition is based on their observation that the cycle of political violence often begins before elections and does not end after that, even though the person behind the problem has been elected. This leads to the CDU's assertion that: "*Elections not only concern the campaigns and the polling day alone. The electoral process is a cycle that lasts the whole period of a government's stay in power.*"⁷ This extensive view of election violence is highly applicable to Kenya. Nevertheless, it does not mean confusing political violence and election violence as the same concept. A study of the tensions at the beginning of 2008 will reveal that some conflicts were rekindled during the elections but the issues had nothing to do with the polls. The number of deaths in these areas and during the election period is substantially the same as that registered over the past few years.

The human rights NGOs also demonstrated the wide variety of election violence that are expressed in various ways such as

⁶ Central Depository Unit, *Monitoring Election Violence. Final Report of 2002 General Election*, Nairobi, 2003, p. 17.

⁷ *Ibid.* p. 5.

...murders, murder attempts, confinement, aggression, threats of violence, torture, arson, rape, sexual harassment, abduction, obstruction, looting, threats, intimidation, hate speech and slander. Others are: insults, political treachery, embezzlement, destruction of property, damage to property, economic oppression, sabotage, evictions, closure of the political party offices or campaign offices, violent disruption of public rallies or campaign meetings, including sudden change of venues of such meeting by the authorities⁸.

Beyond simply showing the repertoire of practices, this list also reveals the multiplicity of methods used by politicians.

NGO analyses are based on an analytical focus that is first and foremost neo-institutionalist in nature. They have a pragmatic approach in the sense that they constitute “*applied*” social studies. This makes them carry out research on the institutions that are important social actors because their objective is to suggest changes and if possible, improvements in the functioning of these institutions. In this sense, these advocates (they are often law graduates) do not have a strictly normative approach even though they manage to come up with recommendations that are mainly (but not only) legal. Looking at the 2008 political violence, the interest in using their approach becomes clear. Their work on the 2002 elections heralded difficulties related to the 2007 elections. The CDU emphasized that institutional inconsistencies of political parties which are basically mere election machines activated during campaigns, creates favourable conditions to primary elections that are often chaotic and violent. It denounced the ECK’s *modus operandi*, showing clearly that it could not be relied

⁸ *Ibid.* p. 17.

upon to organize the elections.⁹ In December 2007, the rigging took place in ECK offices. The CDU also highlighted the autocratic culture within the Kenya Police, which lacks professionalism and is propped up by a legal framework that does not define election violence. Election violence is therefore a matter of the general law, particularly the general penal code, which leaves a lot of leeway (and room for interpretation) for the security forces.

Nevertheless, the NGOs' neo-institutionalism perhaps assigns too much influence to the law than it really has. This voluntarism, believing in the impact of the government on the rule of law, is not necessarily naive. However, it reduces the analytical focus because the institutions do not explain the whole crisis and will not be able to resolve the observed problems on their own. This is insofar as Kenya is a political system where the State still has weak institutions (even though it is the most structured and effective State in the region).

The analysts did not foresee the crisis that followed the elections of 2007. The failure of the political transition was surprising because it was thought (or one would have wanted to believe) that the political class had really been converted to a culture of democracy. The intensity of the violence also took observers by surprise. Political experts now focus on the existing dynamics that were sometimes barely visible but which facilitated or precipitated the crisis. The NGO analyses of the election violence show this approach. Nevertheless, until specialists on Kenya who have commented on the situation show that, even amidst the hue and cry over the crisis, the varied approaches could prove to be illuminating.

⁹ According to the CDU, the method of hiring commissioners of the Electoral Commission of Kenya (ECK) (presidential appointment) does not guarantee their independence. Since 1997, political practice has been that the President consults the opposition so that election Commissioners are considered acceptable by everyone. Kibaki did not respect this recent constitutional tradition. It is now observed that the cheating during vote tallying could not have happened without the complicity of Commissioners. Other ECK employees, casuals hired ahead of elections, also participated in the rigging. As early 2003, the CDU had begun denouncing the abusive tendencies of these people, who are ill-trained and hired through favouritism and nepotism. Anne Cussac revisits these practices in a lengthy paper.

First, there are those who point to external explanations and in particular those that favour the view of the white man's guilt. Caroline Elkins¹⁰ states that "*whereas hundreds of thousands of Kenyans fled their homes and hundreds died, the Great Britain takes part of the blame for its imperialist policies*". She thus revisits the views she held during debate on her work on the repression of Mau Mau¹¹ fighters. According to her, the colonial government left a legacy of an autocratic political culture, which is the direct cause of the current ethnic tension because it fossilized heterogeneous groups of individuals in closed ethnic communities and pitted them against each other due to its divide and rule policies. Her analysis points out the carving out of the electoral constituencies along ethnic lines and that the political class is a direct legacy of the colonial era. This has been perfected through the government's approach. Nevertheless, C. Elkins analyses largely draw from the Anglo-Saxon debates on post-colonial issues. Her views probably make it possible to understand certain dynamics of Western imperialism and lead the Northern States to assume their historicity and perhaps the debts incurred in relation to the South, as well as to understand the particularities of contemporary African States.

Michael Holman¹² holds a view close to C. Elkins'. He questions the Western countries and NGOs which all along supported M. Kibaki's government when financial scandals were exposed and evidence of high-level corruption had been gathered. Thus, they approved the ills of a regime that led to the major crisis that Kenya is currently experiencing. The issue of responsibility should be raised. Wanyama Masinde¹³ has

¹⁰ 'Ethnic woes a legacy of colonialists' power game', *Pambazuka News*, 10 January 2008.

¹¹ C. Elkins (2005). For a critic of her methodology and ideology, refer to David Elstein, 'The end of the Mau Mau', *The New York Review of Books*, 52, 11, 23 June 2005.

¹² 'Kenya: chaos and responsibility,' *Open Democracy*, 3 January 2008, <http://www.opendemocracy.net>.

¹³ 'Kenya's trauma, and how to end it,' *Open Democracy*, 10 January 2008, <http://www.opendemocracy.net>.

already published reflections on possible ways of resolving the crisis. According to him, the management of the post-crisis period demands a search for those responsible for the crisis and legal action against the guilty parties who are part and parcel of the Kenyan political class. He once again goes through an analysis of the country's internal dynamics without hiding behind exogenous causes.

G rard Prunier¹⁴ develops a framework of complex analysis that begins by highlighting the Kenyatta era (1963–1978) as the matrix of the national political system that M. Kibaki largely reactivated following the long interlude of the Moi era (1978–2002).

From Kenyatta's time, the deal was simple: the Kikuyu and their small sub-tribes, after having reached an agreement with the minority ethnic groups, took control of everything. The Luos, who sought to modify this order of things, were marginalized, while the prudent Luhyas watched.

G. Prunier draws attention to the fact that the Kibaki team, which was elected to implement the far-reaching reforms, principally crystallized the idea that it was seeking to first Kikuyunise the State and did not aspire to equitably share the fruits of growth. This led to a more anti-establishment than anti-Kikuyu majority vote during the elections. The analysis of the socio-political context leads him to evaluate the nature of the outbreak of violence that followed the vote: *“political violence should be considered both ethnic and socio-economic”*. In fact, the diagnosis made by all other experts on Kenyan states this claim while highlighting the two dimensions, and demonstrating how they function, which G. Prunier hardly done.

¹⁴ ‘Kenya : roots of crisis,’ *Open Democracy*, 7 January 2008, <http://www.opendemocracy.net>.

Aggrey Omondi¹⁵ says:

...the cause of the problem is neither tribalism nor politics (whose role is solely incitement), but rather a long simmering history of glaring poverty and despair, which has now reached a boiling point with a generation of young Kenyans to whom basic opportunities have been denied.

His analysis, rather brief in some aspects, has the merit of emphasizing the role of the youth but even then, he only views one part of problem when he emphasizes that young men found an opportunity to express their economic frustrations through the crisis. These young people must first and foremost be perceived as social cadets who hold important means of pressure through the militias that organize them.

The last open forum on the Kenyan crisis highlighted the ills of ethnicity. Angelique Haugerud¹⁶ believes that political ethnicity does not determine political development but constitutes a contingency of uncertainties. By this she means that the content of ethnicities can evolve. She takes a peek into the future by expressing the wish for these identities to depend more on the reciprocities of everyday life, which will make it a collaborative issue rather than pit two groups against each other. However, some negative dynamics weigh against and impede this evolution: the divide between the political elite and ordinary citizens, the inequalities between those who still have a roof over their heads and those who have been dispossessed, and finally, the tension between what can qualify as electoral democracy and what corresponds to substantial democracy.

John Lonsdale¹⁷ bases his appreciation of the Kenyan crisis on a very classic analysis of the structural functioning of political competition. Power-sharing of State authority is governed by rivalries between ethnic

¹⁵ 'Humanizing the roots of the violence in Kenya', *Pambazuka News*, 31 January 2008, <http://www.pambazuka.org>.

¹⁶ 'Kenya: spaces of hope', *Open Democracy*, 23 January 2008, <http://www.opendemocracy.net>.

¹⁷ 'Kenya: ethnicity, tribe, and state', *Open Democracy*, 17 January 2008, <http://www.opendemocracy.net>.

groups and within the ethnic entities through a vision of responsibility on the part of elected leaders in relation to the community. These two dynamics are complementary. However, this extractive approach to politics, which Jomo Kenyatta broke, increased the difficulties the Moi regime faced and which the M. Kibaki team must now manage. Lonsdale explains to us this new equation with his habitual finesse:

The fierceness of the competition for sharing of State power became more intense with time - as far as the population increased, and while the abundant showers of opportunities in post-colonial Africanisation had long stopped, the conditions of exchange for primary needs had proved to be bitter. It would have been quite easy for Kenyatta to guarantee that everyone has their turn 'to eat' through ethnic coalitions on which parliamentary majority depended. It was more difficult for Moi. As the list of political interests grew, it became more tempting to attract and to reward one's ethnic supporters with opportunities to grab resources at the expense of those who had now become tribal rivals for land, urban property, or the small enterprises. With every 'bought' election, anger mounted among Kenyan citizens to the point that they piled pressure for constitutional change that would have strengthened parliament, to the detriment of the presidency.

Thus, the current crisis is a result of the ills of "*politicized tribalism*", the principal means of winning post-colonial State power, which is less viable than before but remains the most important means to riches.

It is observed that these very first studies on the Kenyan crisis principally aim to understand the causes of tension, particularly historical dynamics that led to the current situation. In the meantime, these researchers are not interested in the forms in which the violence manifested itself, the protagonists or in its geographical spread. Besides, the factors—especially the economic ones—behind the outbreak of violence have hardly been analysed, as if it was the exclusive duty of human rights NGOs, which have already published voluminous reports.¹⁸

¹⁸ International Crisis Group, *Kenya in Crisis*. Africa Report N°137, 21 February 2008; Kenya Human Rights Commission, *Violating the Vote. A Report on the 2007 General Elections*, 27 February 2008; Human Rights Watch, *Ballots to Bullets. Organized Political Violence and Kenya's Crisis of Governance*, March 2008, Vol. 20, N°1 (A).

FACTORS BEHIND THE VIOLENT PROTESTS OVER OFFICIAL ELECTION RESULTS

Since the return of multi-party politics, the results of three out of four general elections have been contested by losers. Nevertheless, these accusations of rigging did not degenerate into an outbreak of large-scale violence like in 2007-2008. It is true the 1992 and 1997 elections led to post-election violence, but there were never perceived to have characteristics of a civil war. The nation and the State did not seem to be in contention. How different are the 2007 conditions from those of 1992 and 1997?

Elections under high tension

Electoral fraud has been widely practised since the introduction of elections in the colonial era. The return of multi-party politics enhanced the chances of rigging the outcome of elections. In this context, between the opposition and the majority, those in government have a lot more means and opportunities at their disposal, since they control the local administration as well as the police. The 2007 election clearly indicated the advantage that the incumbent has. Thus, all the bodies that monitored the elections showed that some rigging affected ODM (Orange Democratic Movement) areas, but the rigging was apparently much more massive in constituencies where PNU (Party of National Unity) had the upper hand. The ECK staff seems to have played an important role in this rigging, both at local and national level. The commissioners appointed in 2007 by the President without consulting the opposition, as was the practice since 1997, were hence accused of abuse of office.

These excesses were nothing new. International observers who monitored the 1992 elections considered them marred by numerous intimidations and rigging. In 1997, European observers, before

assessing the fairness of the election, were obliged to reconsider their stand to enable Northern States endorse the official results. After these two elections, losers denounced rigging that led to fraudulent results.

In 1992, the opposition garnered more votes than the incumbent but, since they were divided in the struggle, President Moi and KANU (Kenya African National Union) garnered a higher number of votes. KANU managed to unite the small ethnic groups against the threat of a dictatorship from a possible alliance between the Luo (represented in the presidential election by Oginga Odinga) and the Kikuyu, who had two candidates—Kenneth Matiba and M. Kibaki. After an election marred by numerous cases of fraud, the three opposition leaders tried to set in motion what they called “unity in defeat”. They intended to contest the election results through mass action but their disagreements re-emerged and the rallies ended, especially because O. Odinga quickly negotiated a cooperation mechanism with the government. Legal petitions were also launched but they were pointless in a country where judges are on the government’s payroll (or of the rich). After a few weeks, the challenge to the election results died out and losers sought to prepare themselves for the next elections. Indeed, the political system, especially parliament was so restricted that the opposition could hardly be accorded any role. The practice was such that the winner took everything, leaving the loser with nothing.

Influenced by the civil society, particularly the lawyers in the Law Society Kenya and human rights NGOs, the opposition politicians were convinced that the Moi regime could not be changed without constitutional review. The incumbent had too much power leverage and influence that it made competition unequal, and all the candidates did not compete on a level playing field. From 1993, an active minority of lawyers, with massive support from Catholic and Anglican bishops, held public debates on the desired content of the next constitution. During this period, Christian institutions took in the streams of persons who had been displaced following ethnic cleansing in the Rift Valley,

and this deeply changed relations with the political leadership. Leading clergy expected constructive criticism of the regime from lawyers, who, on the one hand, explained the institutional shortcomings that led to such dramatic autocratic ills, and on the other, recommended reforms. Moreover, leaders of the mainstream churches were unhappy with the political class. They thought the opposition was locked in ego wars and did not particularly consider them as sincere democrats. Thus, between 1993 and 1996, political professionals took little interest in debates on constitutional reform. But at the beginning of 1997, just before the election campaigns, opposition politicians plunged into the constitutional reform movement because they saw that the civil society could mobilize crowds. In reality, the protests led by groups of lawyers were more to the point than the rhetoric of elected leaders which offered nothing new. Residents of big towns were convinced long before the politicians understood that institutions count and that change would follow suit. In 1997, the regime conceded cosmetic constitutional reforms that did not really change the power imbalance. Besides, the opposition proved unable to unite just as in 1992, facilitating the incumbent's victory.

Once again, opposition leaders rejected the election results. In his biography of Raila Odinga, Babafemi A. Badejo gives a rather detailed account of the weeks that followed the 1997 elections.¹⁹ One of the presidential candidates, Michael Wamalwa, did not join the rest of the opposition in taking action against the government. He immediately accepted the official results. M. Kibaki, Charity Ngilu and R. Odinga initially planned to mobilize supporters to disrupt the swearing in of the President. However, the plan did not work. M. Kibaki made inflammatory statements in the media but no action followed, and on 6 January, Odinga recognized President Moi's re-election. He particularly suggested ways of cooperating with the regime and led his party LDP

¹⁹ B.A. Badejo, 2006 (chap.14).

into government, then went ahead to merge it with KANU. Rather than protest against the government, he cynically opted to collaborate with the incumbent to promote his ideas on necessary constitutional reform from within the government. Finally, the contentious results of the 1997 elections were accepted by an opposition that was so increasingly frustrated that it found itself in a position of helplessness in the face of targeted government-orchestrated violence. Thus, militias basically attacked areas associated with candidates who intended to petition the official verdict of the elections.

The 2002 elections took place with a radically renewed party system. KANU imploded, thus facilitating unity of a large opposition. This overturned political landscape was mostly due to activism by Raila Odinga, who jumped off the KANU ship a few weeks before the elections. He joined the opposition, which won the election with a big margin. Uhuru Kenyatta, the KANU candidate, quickly conceded defeat, which was particularly significant for both the presidential and legislative elections. Obviously, elections are contested only when the results are controversial and the race between the two camps was very tight.

This was the case in 2007. But why was R. Odinga, the opposition leader who so easily conceded defeat in 1992 and 1997, so pugnacious and reluctant to accept official results in 2007? Why did he validate such a violent protest against the government?

The particularity of the 2007 elections

Once again, the party system had changed enormously since 2002. The development of party alliances as well as changes in organization of some parties makes it easy to understand that in 2007, the opposition had more means and opportunities to resort to violence (if the leaders

opted for this strategy). First, the ODM, which crystallized after the 2005 referendum, is commonly viewed in Kenya as an agreement to join majority forces between the Luos, the Luhya and the Kalenjins. Most ODM Kalenjin leaders built up a large part of their political career within KANU during the Moi era. In the 1990s, they often participated in the two waves of ethnic cleaning, without necessarily being the brains behind it.²⁰ They were part of a regional political system that unanimously rejected the presence of people perceived as non-natives.

This vision of political life has until now been confined to the Rift Valley, but in this region, it permeates numerous categories of the population. This ethnic nationalism of exclusion is not only a matter of manipulation by the elite. It is an ideology that now involves a lot of people. In the beginning of the 1990s, the initial research on ethnic massacres in the Rift Valley blamed gangs of youth manipulated by politicians. The populations on the ground did not seem to directly participate in the killings. On the contrary, the early 2008 ethnic violence tried to involve as many people as possible.

The Luo and Luhya political forces also had great potential to mobilize for violence. R. Odinga attempted to build a party with the characteristics of a 'movement' based on the Ugandan model invented by Yoweri Museveni or the Rwandan model as structured by Paul Kagame. The Kenyan context and the need to build coalitions limited R. Odinga's ambitions. Nevertheless, this inspiration existed in a more systematic and structural use of youths than in other Kenyan parties. Thus, the youth in his camp were organized in paramilitary units. Parallel with these official structures, with the help of Luo personalities, the party funded militias of vigilantes that patrolled districts in all big cities in the country where the Luo are dominant. They were also used

²⁰ Among the ODM MPs elected in 2007, only two were mentioned in the ethnic killings of the 1990s.

to control the votes of people living in the area. In 2002, R. Odinga had already set in motion this electoral strategy and it had begun creating tension with other vigilante groups.²¹ In 2007, this unique network of militias in the big cities made it possible to immediately react to the announcement of election results that were considered rigged. However, it is impossible to blame them for all the ethnic cleansing that occurred in the slums of Nairobi.

The Luo politicians were not the only godfathers of the militias. Among the leaders of ODM, William Ruto was one of the founders of the Youth of KANU '92, and one of the sponsors of Kalenjin warriors who organized the massacres perpetrated in Eldoret South in 1992–1993. Fred Gumo, the Westlands MP, for a long time controlled the Jeshi la Mzee. W. Ruto and F. Gumo were part of the small minority of big men who had the means to permanently have militias at their disposal. The other politicians only recruited these groups of youth during the election period to ensure security at their rallies and their movement in the constituency. Thus, the culture of militias permeated the political class in the two camps. However, the incumbent or at least top government leadership spent a lot of energy in 2007 trying to weaken the main force of youths in their ethnic group. They actually persecuted Mungiki, thinking that they would not need its services like they had during previous elections, since they controlled the police force from 2002. This calculation proved to be wrong because their community was less organized to counter the violence that broke out shortly after the election results were announced.

The opposition therefore had a vast repertoire of options in 2007 as opposed to the previous elections. Resorting to violence was one of the options at its disposal. In early January 2008, Martha Wangari Karua, Minister of Justice and Constitutional Affairs, and close advisor to the head of state admitted during an interview with BBC programme

²¹ H. Maupeu, 2002.

HardTalk that the government had predicted that ODM “*could plan violence if they lost*” but she expressed surprise at the ‘magnitude’ of the reaction and that it amounted to ‘ethnic cleansing’. The incumbent thought that State monopoly of power would protect them and would enable them to act with impunity. They had underestimated the new opposition forces. This was particularly manifest in the Rift Valley Province.

ELECTION VIOLENCE IN THE RIFT VALLEY

All analysts stressed that election violence is a recurrent problem in Kenya’s democratization process. It is intimately linked to land policies of the post-colonial State, particularly those of the first president, J. Kenyatta. He allocated large tracts of land in the Rift Valley²² to members of his ethnic group, the Kikuyu, who have since been considered as intruders. Nevertheless, the presence in the Rift Valley of the Kikuyu, alongside the Kisii, the Luo and the Luhya is not a recipe for violence until tension is sparked off by State actions, with the behaviour of the administrators often construed as provocation. The other necessary ingredient is cynicism of some politicians who fuel the resentment and finance gangs that are ready to slaughter the targeted people. This section will determine the structural dynamics that fuelled election violence both before and after the elections.

Tension zones

The 2007 election campaigns have currently been portrayed as having been more violent than the 2002 campaigns, which were the

²² During the colonial era, the best land in the Rift Valley were reserved for Whites. After independence, many British settlers sold their farms, freeing a lot of land in this province considered Kenya’s bread basket.

most peaceful of the multi-party era. The Kenya National Commission on Human Rights (KNCHR)²³ reports showed that about 70 people died from July, whereas in 2002, 325 Kenyans lost their lives in political tension. To put the KNCHR figures in perspective, it should be remembered that it does not use the same criteria used by other human rights NGOs in assessing election violence. It only keeps records of violence that occurs around election-linked events (rallies, demonstrations, primaries...). This very narrow definition excludes the most heinous violence of the period that precedes the elections. Thus, the very high numbers of deaths in Mount Elgon (close to 600 and 150,000 displaced persons since the end of 2006) are not accounted for. Some 500 youths killed in 2007 by the police in the fight against Mungiki as well as scores of murders committed by members of this militia group are not part of the KNCHR analysis.

Regardless of these two large tension zones where conflict was already intense throughout 2007, there were visible crisis areas where violence started as part of the election campaigns before really exploding after the elections. This geography of massacres is familiar as it is similar to the ethnic cleansing perpetrated during the 1992 and 1997 elections.

Indeed, the 2007 election campaigns reactivated the usual tension areas in the Rift Valley, some of them having been in existence since the Mau Mau crisis in the 1950s; some even echoed the anti-colonial uprisings in the 1920s. This region is popularly known as the smouldering cauldron of Kenyan politics. It would be perhaps more relevant to see it as the black box of the political system because the problems facing this zone are at a national scale. However, from a political analysis perspective, it is difficult to view the Rift Valley Province as one whole. That is what John O. Ouko²⁴ does when he

²³ Refer in particular to "*Still Behaving Badly*". *Second Periodic Report of the Election-Monitoring Project*, December 2007.

²⁴ J.O. Ouko, 2002.

stresses that the province experienced the highest population growth rate in the country (after Nairobi) due to massive immigration. He recalls that the Kikuyu had the highest amount of investment in the region and that their dynamism made it possible to develop proximity trade as well as the agricultural sector. He identifies the general circumstances that encourage aggressiveness of people that consider themselves natives of the region. However, this large area of focus not makes it no easier to understand why conflicts break out precisely at a given period and in specific places. Some areas seem more conducive for these types of political strategies. Hence, it is worthwhile (at least concerning our subject) to begin from the standpoint that the Rift Valley is not a homogeneous province, neither from the cultural point of view nor in the political arena. It has to be seen as a mosaic. Thus, the national politics are diffracted or articulated in this zone according to very specific grounds and localized relationships. To illustrate this, it is necessary to highlight one area of tension, Molo. This zone is only one of the hot points in the Rift Valley because in 2007, relatively serious violence was also recorded in Laikipia, Trans Nzoia, Narok, Turkana South, Baringo, West Pokot, Trans Mara and Kuria districts.

The case of Molo

Molo is situated in the heart of the Rift Valley Province. It is one of the main places dominated by Kikuyu politics, which is often mistaken to be confined to Central Province. This mistaken belief is due to

long-standing reasons. It is particularly the Olenguruone²⁵ crisis that captured the political imagination of this political field, at least from the Kikuyu point of view. In 1939, the state bought 52,000 acres in Olenguruone, land that was at the time part of the Maasai Land Unit. This land was redistributed to squatters on white farms, who had been rendered less as a result of mechanization. It was also at this time when families that had lost land in the Kiambu region following the expansion of White farms, were compensated. Those Kikuyu that had settled on neighbouring Maasai land were relocated to this new site. This colonial programme of settling farmers caused great frustrations. The administration refused to issue title deeds. The farmers found themselves left only with tenant farming rights (*ahoi*). Given the type of farming they practiced the acreage of land they were allocated was insufficient to live on. In fact, the administration sought to impose on them some crop farming methods that were supposed to avert erosion, but the Kikuyus stubbornly refused to apply them. From then on, the families never managed to live sufficiently off the land. This led to the colonial authorities gradually evicting these families, who were then transferred to the Kamba region in the 1950s. It was a radical means of countering the deep politicization and mobilization of Olenguruone inhabitants. Indeed, since 1943–1944, most Olenguruone inhabitants took a unity and struggle oath, which gradually spread to squatters of the white farms of the Rift Valley and to the people of Kiambu South. Thus, mobilization among these farmers is commonly believed to be one of the main beginnings of the Mau Mau²⁶ crisis. The memory of

²⁵ Olenguruone was until 2007 one of the 16 “divisions” of Nakuru District. It was carved administratively out of Molo “Division” but Molo is the undisputed political centre of this area. This is, especially due to the fact that it is the big town in this part of the vast Nakuru District (17,188 urban dwellers out of the 31,935 inhabitants of the Molo “Division” compared to only 509 urban dwellers out of 32,030 inhabitants of Olenguruone “Division” source: 1999 Census). It is first and foremost an important administrative center along the Mombasa-Kampala railway. For some months now, Molo has become an autonomous district which includes Olenguruone.

²⁶ Refer to T. Kanogo, 1987 (chap. 4) ; F. Furedi, 1989 (chap. 3), for instance.

this struggle still lives on. Several songs sung by the Mungiki, a neo-traditional Kikuyu sect that unites a number of militias, speak of this crisis and honour the fight by these ancestors. In reality, Olenguruone has for over half a century symbolized what the Kikuyu consider the injustice of land ownership as imposed by the State. These Kikuyu were denied the basic right to achievement as a Kikuyu man—that of owning land on which to exploit his talent as he so wishes without outside interference. They were also stopped from enjoying clear rights on their land. Thus, Olenguruone is perceived as a story of multiple political obstacles that the State placed on their desire to live off farming. It explains the numerous failures of plans to resettle landless peasants or those who had been evicted.

Olenguruone did not stop the Kikuyu from returning to the Molo area. For a number of families from Central Province, national independence meant opening internal borders so that these peasants could try their luck where land could be bought. The Rift Valley was thus the land of opportunity at the time since the Whites, who controlled a good part of the land, had left the country. It is influential people, particularly politicians, who benefited from the manna but in Molo the land was not very fertile. It attracted only small-scale farmers, who mainly cultivated pyrethrum in these high altitude areas (approx. 2500 metres above sea level). When multi-party politics resumed, this immigration, some cases of which were old, was perceived by some quarters as intolerable. In 1992, the first ethnic cleansing began but in this region where the Kikuyu were very politically aware, this technique actually led to the election of good people. In order to put an end to the excesses and pacify the region, the area's political leader, John Njenga Mungai negotiated with the government and crossed the KANU rubicon. In 1997, he lost his seat—the Kikuyu voters blamed him for compromising. Dickson Kihika Kimani was elected with 73% of the vote on a DP (Democratic Party, M. Kibaki's party) ticket just when violence was resuming.

Following their failure in 1992, Kalenjin leaders managed to hive off a section of Molo constituency in 1996, which became a new entity that would be a 'KANU zone'. Kuresoi thus annexed Olenguruone that had been 'cleansed' of Kikuyu farmers. Some came back but most of the land had been repossessed at throw-away prices by the influential people. This frustrated the landless Kalenjins. In 1997, Kuresoi was less affected by massacres than Molo because the ethnic demography had already changed and the whole region was traumatized by the killings carried out by their neighbours. Added to this was the economic depression that had persisted following the initial unrests of 1992 (several commercial sectors died out with the departure of the Kikuyu). In 2002, KANU won back the constituency with only 47.5% of the votes. Mburu Mungai got all the Kikuyu votes (21%) while the other five Kalenjin candidates were an indication of dissatisfaction of voters. The 2007 elections therefore promised to be difficult and ethnic cleansing was in the offing. By the end of October, some Kikuyu farms had been burnt and people killed. The escalation of violence was swift as the Kikuyu retaliated and killed several Kalenjins. In the tension that ensued, some Kisii families were also slaughtered. Within three months, close to 25 people had been killed and 16,000 displaced (according to Red Cross figures). All human rights organizations that carried out investigations in the area accused two politicians. Fingers were pointed at the outgoing MP, Moses Cheboi, who after losing the primaries, sought to defend his seat paradoxically under the banner of a dominantly Kikuyu party, Safina. His main competitor, Zakayo Cheruiyot (ODM), who went on to win the elections, was also said to have bankrolled the political violence during this period.

The Mau Forest

Tension in Kuresoi is partly linked to the very delicate issue of the management of Mau Forest. This massive highland (covering close to 400,000 ha; 36% of the country's forest cover) is one of the important areas in Kenyan politics. Multiple political problems adhere to this area

but the bone of contention is due to the fact that several communities are fighting to enjoy this very fertile land. The Kikuyu, especially those who were internally displaced the 1990s, see in it uncultivated areas; the Maasai do not want to lose their political influence over the area as they had occupied it for a long time; the Kipsigis to the west and the Kisiis did not want to be left out in the sharing of the spoils; finally, throughout the 20th century, the Ogiek (earlier referred to as Dorobo), who were determined to live exclusively in forests were a pretext for tension with the State and between the communities in the area. In the last few years, disputes have focused on the State plans to resettle the Ogiek, which has led to mismanagement and land grabbing by influential people and politicians.

In general, three large and distinct zones of tension that persisted until 2008 can be identified in this vast forest land.

First is Likia, which is situated in Mauche Division of Nakuru District. For two years, it has been at the centre of violence between Kalenjin and Kikuyu militias. In 1997, 1,605 acres of forest land was allocated to 318 Kalenjin families. The owners are generally absent and they cultivate the land through relatives. Since the beginning of M. Kibaki's presidency, families of internally displaced Kikuyu in the 1990s have been squatting on parcels of land neighbouring the forest on the grounds that if Kalenjins could deforest, they in turn, could also illegally settle. In 2003, Lands Minister Amos Kimunya declared that all forest inhabitants were illegally occupying public land. The Kalenjin families and the Kikuyu squatters were asked to leave. Negotiations with the government attempted to find solutions. In the beginning of 2006, Kalenjin militias attacked the neighbouring Kikuyu squatters. Two months later, the police expelled the two communities. Since then, the clashes have increased with the former occupants determined to come back.

The second hot spot is eastern Mau. Towards the end of the 1990s, 24,000 ha of highly fertile volcanic land were carved out of the forested area²⁷ and close to 28,000 people were settled on these plateaux. In 2001, the State degazetted this part of the forest, officially declaring that it was no longer forestland. But the number of farmers grew too rapidly and their farming methods endangered the ecological balance of these hills, which are the source of the rivers that flow into Lake Nakuru²⁸. The government sought to control this situation and this caused tension, leading to many deaths over several years.

The third area is the Maasai Mau Forest, which experienced recurrent violence. In 2005, close to 10,000 people (2,750 families) were evicted by the police. The authorities destroyed not only houses but also community facilities (schools, churches, clinics). The police engaged in excesses that led to the explosion of the political situation.

Fragile policy lines

Thus, it was easy to believe that the Kibaki regime was determined to control the land situation in the country and put an end to the illegal occupation of public land. However, this policy became untenable during the electoral campaign period. In 2007, the government made some progress on its policy regarding forest squatters and it allowed the evictees to return. Weeks before the primaries, the ban on the '*shamba* system' was lifted. As a result, close to 10,500 people returned to Mau Forest. This directly conflicted with the Maasai interests, made the Kipsigis jealous and disrupted the Ogiek lifestyle. Some candidates in the elections did not particularly appreciate this influx of people, which was hardly in their favour. It was impossible to rule out the recurrence of political violence under such circumstances.

²⁷ Any form of cultivation is prohibited in the areas recognized by law as "forest land".

²⁸ The gradual drying up of this lake has been attributed to this deforestation.

In Molo District alone, a variety of tension areas can be identified. They are supported by national dynamics (especially through State policies) and by very local and often old-fashioned thinking. After the 2007 election results were announced, these conflict spots, where election campaigns proved to be particularly violent, experienced violence on a more vicious scale and tension reached its peak.

Obviously there were massacres in many other places from the end of 2007, but even then, violence did not break out just anywhere. Shortly after the beginning of the crisis, between 27 December 2007 and 3 January 2008, UNOSAT published satellite photos of fires in the Eldoret area.²⁹ During this first week, the most intense fires were reported on 1st January. A look at these documents showed that the violence was essentially concentrated in two places, one of which is well known: Burnt Forest. In 1992, the first ethnic cleansing of the multi-party era took place here. It targeted a Kikuyu settlement set up shortly after independence on land formerly belonging to British farmers.

The numerous killings in Kalenjin areas were the result of ethno-nationalism which radically shuns people perceived as non-natives who are out to loot wealth that belongs to them. This ideology has recently been reinforced by two dynamics. The first is linked to the policies implemented by the Kibaki regime on internally displaced persons, who were victims of various waves of inter-ethnic violence. In 2004, United Nations agencies estimated the number of these refugees to be close to 350,000. The Kibaki government took interest in these people and attempted to set in motion a public welfare policy through the development of 443 land distribution programmes. According to the Kibaki administration, 232,225 people would have benefited from

²⁹ <http://www.unosat.org>.

these plans.³⁰ However, the redistributed land was often in the Rift Valley, which was a major factor behind the tension with the Kalenjin community. This latter considered the measures as a re-colonisation of their land reminiscent of the Kenyatta era, during which several Kikuyu families came to this province.

A second dynamic is the basis of the rejection ideologies. Towards the end of the 1990s, the East African Tanning Extract Company (EATEC, which for a long time belonged to the multinational company, Lonrho) placed back on the market several thousands of hectares of good quality arable land. The State leadership (especially Daniel arap Moi himself) amassed vast tracts of land at a good price. It provoked intense mobilization among the local people and a young generation of politicians, who took the mantle of Nandi nationalism, and who were especially hostile to other Kalenjin sub-groups.³¹ Since then, the other large group belonging to the Kalenjin entity, the Kipsigis, developed their own nationalism. These young politicians, who refer to themselves as 'nationalists', conducted an exclusion election campaign, which was a big success and most of them were elected.

The success of reformulating these political identities seems to have crystallized an evolution in the methods of massacres in the Rift

³⁰ Internal Displacement Monitoring Centre-Kenya, *Continued conflict and displacement in the Rift Valley*, Special report, December 2006. Figures provided by the government should be considered with some caution. Indeed, these resettlement programs for the internally displaced particularly enabled Kikuyu tycoons to get rid of their large farms in the Rift Valley and which were for now unprofitable and had lost resale value. Njenga Karume, the defence minister in the first term of the M. Kibaki government, was apparently one of the beneficiaries of this manna.

³¹ Kalenjin is an amorphous ethnic entity created by Daniel arap Moi and other leaders shortly after the Second World War in progressive preparation for independence. Thus, these Nilotic ethnic groups (principally the Kipsigis, the Nandi, the Tugen, the Keiyo, the Marakwet, the Pokot and the Sabaot) came together to avoid marginalisation in negotiations between ethnic blocs. To read about the political effects of the EATEC affair, refer to J.M. Klopp, 2002. This paper demonstrates the positive effects of reinvention of Nandi nationalism. The 2008 massacres reveal the dark side of this same ideology.

Valley. Reports on the investigations on ethnic cleansing in the 1990s show that the killings were perpetrated by gangs sent out to maim and kill. These youths were apparently from outside these areas. In 2008, the local people were involved in the violence. They were called upon to fund the violence and provide young men, notably with the help of pressure from elders. However, evidence of this remains rather incomplete.

Whereas in 1992–1993, violence was confined to the Rift Valley, in 2008, the crisis took a national dimension. Thus, several towns were affected.

URBAN VIOLENCE AND KILLINGS BY THE POLICE

Most of the towns in the country were affected by the election violence in very different ways. Many slum areas were seriously affected by inter-community tension. Urban areas also experienced brutality of the police force which often acted like social actors serving one side. The policemen routinely behaved like faithful and extremely partisan allies of the ruling class. In some regions, however, they did not appear to be State representatives and holders of power. They could therefore openly support the opposition, including when groups perpetrated killings in their name.

Kisumu was one of the towns that was most affected by the election violence. In the days that followed the announcement of election results, Kisumu wrote a new chapter in its political martyrdom. In the Luo capital and the Odinga family stronghold, any impression of stolen victory would have inevitably led to a popular uprising. For forty years, the Luo people had cultivated a strong sense of frustration or persecution. They felt alienated from power but Odinga rekindled

a prophetic hope that was magnified by the tribulations. Moreover, as a leader, he has always included the younger generation in his political plans. R. Odinga is one of the very rare Kenyan politicians who considers youth issues and takes them into account. While the political class considers them as social cadets who must submit to the authority of elders and elites, R. Odinga considers the fact that in Kenya's electoral democracy, the youth is an important majority group that always aspires to some autonomy, at least from the elders. Thus, he treats them like a specific entity with whom legitimate dialogue can be engaged. Thus he enjoys enormous popularity among the youth in the Luo community as well as in other communities.

As soon as M. Kibaki's re-election was announced, the streets of Kisumu were flooded with crowds that more than ever before needed scapegoats. The small Indian minority, which was deeply engaged in trade and industry, saw their businesses and warehouses looted. However, these families did not feel threatened and, apparently, none of these important economic players considered leaving the area or the country. Apart from material damages, these popular protests resulted in many deaths, caused mostly by the police.

During the first wave of violence, the police in Kisumu caused about a hundred deaths, perhaps one of the biggest massacres of the crisis that followed the 2007 elections. It is imperative to see in this the effect of the policy of brutality against the opposition on which the government was quick to apply the infamous 'shoot-to-kill' policy. This was typical of the police under the autocratic D. arap Moi era. The repression was bloodier than planned because of the incompetence of the forces sent to Kisumu. The best trained forces³² had been confined to Nairobi where the authorities wished to contain the situation and prevent opposition meetings at all costs.

³² GSU (General Service Unit, paramilitary) forces have been trained in Israel and their anti-riot gear has been provided by France.

These brutal acts by the police are symptomatic of a force in which most of the officers did not have appropriate training and were assured of absolute impunity. Thus, the Kisumu killings only added itself to the long list of the massacres perpetrated by the police, namely: Garissa (1980), Wagala (1984) where close to 500 Somalis were killed, Madogashe (1982), Bagala (1989), and Malkameri (1996).

Nairobi, the country's capital also experienced several episodes of particularly vicious violence. How did this begin? Is it possible to talk about spontaneous outbreak of armed skirmishes or should specific responsibility be assigned particularly to policemen?

It is even more difficult to know whether personalities, especially elected leaders or elders, caused inter-community tension in some parts of Nairobi. If this is the case, the reasons could be varied. At the national level, opposition leaders played the violence card as a means of forcing the incumbent to negotiate without too much hesitation. This strategy had some effect in the capital city of Kenya to the extent that since the return of the multi-party politics, politicians have used inter-ethnic violence to discipline the middle class and force them not to cut ties with their communities in rural areas. In Nairobi particularly, the middle class districts are too few to cater for the salaried masses that no longer consider themselves as part of the popular classes. Quite often, they live in houses within slum areas where the shacks, cardboard and plastic houses stand alongside very decent houses. All these Nairobi residents, who earn good incomes but could only find accommodation in the slums, were increasingly forced to move to residential areas where their ethnic group is dominant. Ethnic pluralism in the middle class residential areas was not the case in the slums, where it was reduced probably due to ethnic cleansing brought about by the electoral crisis.

It is difficult to blame the massacres in Mathare, Dandora, Kariobangi on politicians alone. The youth militias were also to blame.

They were fighting for the control of the lucrative security and ransom market, amongst many other possible rackets. The election crisis made it possible to challenge the hegemony of certain gangs over certain parts or streets of Nairobi. These gangs also used social tension within their areas, especially those described by journalists as the “*rent wars*.”³³ It was also easy to capitalize on these sentiments because home owners or landlords are mostly Kikuyu while the tenants are generally from other communities.

A third social actor played an important role in the Nairobi massacres. Indeed, the police were involved in several excesses like they were in Kisumu.³⁴ The violence particularly took place in Kibera, located in the constituency represented by opposition leader R. Odinga. The Kenyan police had long forgotten its motto, *Utumishi Kwa Wote* – Service to All.

The Nairobi killings essentially took place during the first fifteen days of the crisis. From mid-January, an uneasy calm was apparent. Some militia groups emerged from the tension strengthened, as was the case with Mungiki. After suffering several setbacks and being evicted from some parts of Mathare, the movement was able to re-arm, with tacit protection from the police forces, which had hunted them down throughout 2007. This neo-prophetic sect, surviving on its militia activities, sought to resurrect its activities in other Kikuyu towns (particularly Thika and Kiambu) or in towns where Kikuyu are dominant (in eastern parts of the Rift Valley Province). “*Between 23rd and 30th January, the Kikuyu militia in the Rift Valley towns – Molo, Naivasha and Nakuru – carried out ethnocide targeting local communities: Luos, Luhya, Kalenjin, and other minority groups associated with ODM and, by extension, with violence against the Kikuyu elsewhere in the country*”³⁵ the

³³ M.A. Goux, 2003 ; P. Mbataru, 2003.

³⁴ Human Rights Watch, *Ballots to Bullets*, op. cit., pp. 32–35.

³⁵ *Ibid.*, p. 43.

Human Rights Watch report says. Ben Rawlence, the report editor in his document and interviews emphasizes the involvement of Mungiki groups. Numerous rumours circulated that politicians funded the violence and some names were repeatedly mentioned. An example is Samuel Paul Kihara, a former parliamentarian, who is also said to have urged the police in Naivasha to remain passive during the massacres and to stop prison warders from intervening.³⁶

Too much blame is perhaps directed towards the Mungiki, which is believed to have been involved in many tension zones during the second wave of violence (from the end of January 2008). Mungiki became a label whose name alone sent shivers down the spine. This organization became the symbol of militia culture that prospered from the privatization of security throughout the country. Mungiki is the most famous militia in the country but it also owes its success to its unique religious nature.³⁷ It has assets that could enable it to capitalize most on the post-crisis situation as compared to other groups. This is because the outbreak of violence, which thrust the youth into the limelight, also showed them their capacity to change the situation. Obviously, the issue of youth will be a crucial stake in reconstruction.

Conclusion

Following the agreement negotiated under Kofi Annan's chairmanship, the violence linked to the electoral crisis seemed to die down. By the end of February, there were still some pockets of tension, mainly on the slopes of Mount Elgon and, more sporadically, in the country's

³⁶ The Naivasha prison is one of the leading prisons in the country. There are more than 500 prison warders. During the violence, the prison commandant ordered his troops to take positions in the town. They were shot at by the police. In the interest of calm, the correctional institution officers withdrew from the town and left behind one of the worst massacres of the crisis.

³⁷ For a more detailed analysis of Mungiki politics, refer to my paper in this collection, "The role of religious institutions".

arid areas in the north. In the Mount Elgon region, the establishment took advantage of the recent respite to finally send available troops. The GSU, followed by the army, occupied this region. On the Ugandan side, the army tried to close the border and arrested youths who were then handed over to Kenya. This new understanding between the two countries³⁸ temporarily put an end to the excesses perpetrated by the Sabaot Land Defence Forces (SLDF). However, the guerrilla forces remain intact and no political solution has been negotiated yet.

The entire northern Kenya semi-desert area also experienced tension linked to the effects of a persistent drought and a near-famine in several areas. As usual, these economic conditions caused many armed clashes. But in these regions, it was difficult to clearly distinguish the 'usual' violence from those linked to the elections. From February 2008, the three Laikipia districts experienced clashes between Kikuyu farmers and the groups of Turkana and Tugen pastoralists in search of pasture. However, some quarters believe the theft of livestock had been instigated or funded by politicians trying to incite violence.³⁹

Nevertheless, one month after the ceasefire, the situation in Kenyan appeared quiet but certainly not peaceful. The embers will be reactivated if an efficient power-sharing arrangement is not established. However, it has been observed that the two sides have difficulty in coming to an agreement.

There is still no historical perspective to assess the effects of this terrible election violence. What comes out clearly is that the ethno-nationalism of exclusion, that basically seemed confined to the Rift

³⁸ The Kenyan crisis underlined the Uganda's economic dependence on its neighbour. Y. Museveni was forced to negotiate solutions with the Kenyan leadership that would enable the transportation of goods to the Great Lakes part of Africa to resume quickly despite the number of roadblocks that were erected on the two main roads linking Nairobi and Kampala.

³⁹ Integrated Regional Information Networks (IRIN), 'Kenya: Tracing roots of conflict in Laikipia', 31 March 2008.

Valley, has pervaded the entire political space in the country. More than ever before, different communities have difficulty in cohabiting within the entire area of Kenya deemed useful, meaning situated above 1500 metres altitude. The idea of a nation has been cracked on all sides and the State has for a long time been disregarded. But the strategy of rigging and violence brings obvious gains, in particular for the top elite. Thus, the Kikuyu oligarchy, previously weakened by the election⁴⁰ emerged from the crisis re-legitimized, at least within its ethnic community.

The situation is such that once the crisis is over Kenya is going to have to negotiate a post-conflict arrangement. The cease-fire agreement already provides for transitional justice measures through a commission charged with an inquiry into how and why the electoral fiasco happened. In addition, a Commission on Justice and Reconciliation will seek to shed light on the post-election violence. These bodies will have difficulty in carrying out their work in a country disillusioned by the systematic use of such expensive commissions, which ultimately have no impact.⁴¹ Kenyans find it difficult to believe that leaders who perpetrated the massacres will be taken to court. The Kibaki regime has clearly demonstrated that politicians are assured of absolute immunity. This tacit rule even applies to opposition politicians. Without trying to predict the future, one can say that the modalities of transitional justice depend on the nature and form of political transition. The peace agreement provided for the resolution of the crisis through power-sharing. Under these conditions, how can anyone contemplate criminal punishment for political leaders who committed massacres? It

⁴⁰ In Central Province, only 8 MPs out of 29 were reelected. Several ministers were sent packing in their constituencies. Kikuyu voters massively voted for the ruling party nomenklatura around the President.

⁴¹ After the return of multi-party politics, President Moi appointed commissions on any sensitive matter. The reports were often not released or were released too late, as was the case on the 1992-1993 ethnic massacres or the conclusions of the Kirima Commission on devil worship.

is likely that the legal obligation and the memory will be greatly limited as much as possible to enable former enemies to work together.

The transitional justice and reparation measures are aimed at dressing wounds but they are not designed to end the causes of conflicts. The Kenyan crisis took the form of eviction of certain communities accused of amassing wealth at the expense of others. President Moi's regime orchestrated (and manipulated) this ideology of exclusion, and at the same time it implemented policies to help communities that were lagging behind to catch up. Thus, a quota policy was practiced in the universities in order to facilitate integration of youth from pastoralist ethnic groups. In the recruitment of civil servants, similar measures were used to ensure equality of chances between ethnic communities. However, these measures were perceived as politics of cronyism and patronage. Nevertheless, many Kenyan and a number of political groups recommended a more equitable distribution of the national cake between the different regions of the country.

Certain analysts interpreted the Kenyan crisis as a revolt of the poor against an extremely unequal economic system. It is true that Kenya is one of the countries where social inequalities are highest. Experts engaged in debates that sought to answer the question on whether the rapid economic growth in the last few years benefited everyone or just a small privileged minority. The United Nations figures alone show that poverty increased during the last three years of economic growth. Findings by government departments show the opposite: "*At the end of April 2007, a joint survey by the government and donors on the conditions of living in the country revealed that levels of poverty had decreased from 56% to 46% and were still on a downward trend.*"⁴² Apart from disputes

⁴² Michael Chege, 'Weighed down by old ethnic baggage, Kenya races to another historic election', *Online Africa Policy Forum*, 22 June 2007. Apparently, this report has not yet been released. M. Chege's synthesis of the report does not indicate which period the rate of poverty has decreased from 56 to 46 %.

over statistics, opinion polls indicated that a majority of Kenyans felt that their conditions of living had not improved in the last few years. They are especially aware that there is a lack of collective solidarity mechanisms. Families are not a perfect safety net. With the electoral crisis, the ethnic community has once again, become a shield—albeit with imperfections—against aggression by other communities. There is a lack of social security systems. C. Ngilu, Minister of Health during M. Kibaki's first term in office, had recommended a basic health insurance, which ended up being rejected. Kalonzo Musyoka and to a lesser extent, R. Odinga, based their presidential campaign on a development program under a welfare State. The need for social protection was thus at the heart of political debates in which we should see the best of chances for safeguarding Kenyan citizenship.

The Kenyan crisis also brought to the fore a broad range of land issues. Both politicians and analysts persistently recall that Kenyans lack land. However, this thirst for land will never be quenched. Half-hearted land distribution programmes only serve to stir fantasies and frustrations and the legal status of ownership appears more uncertain than ever. Hernando de Soto⁴³ obtained instant influential success with his thesis that capitalism has failed outside the West because the right to land ownership is not guaranteed. He says that for development to take place there is need for property rights that will give small entrepreneurs incentives to play in the market. It is especially applicable to the agricultural sector. Property rights would have to be accorded to squatters, or at the very least legalize their status. His approach may appear simplistic but it stresses the need to extend participation in a capitalist system to vast populations. It presupposes fairer market regulation in Kenya. Crony capitalism, which often characterizes economic practices in this country, is probably one of the worst obstacles

⁴³ H. de Soto, 2000. His theories were acclaimed by a variety of personalities like Margaret Thatcher and Milton Friedman.

to equally distributed economic growth. However, streamlining the economy and affirming genuine property rights presupposes a State where there is predictability and far-reaching reforms, especially in the judiciary.

The extremely violent nature of the 2007 elections showed that electoral democracy is still very fragile. Politicians have embraced the values of this type of government with many ulterior motives. It is therefore difficult for them to propose, in good faith, a social contract that will sincerely question the source of its prosperity.

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THE ECONOMIC CONSEQUENCES OF THE POLITICAL CRISIS

*Ronan Porhel**

On the eve of the elections, the Kenyan economy was presented as the best performing in a region marked by armed conflicts (Ethiopia, Uganda, Somalia, Sudan or the Great Lakes region) and, thus sometimes experienced chaotic economic development. The political crisis led to the closure of factories, to the accumulation of delays in supplies, to cancellation after cancellation by tour operators in the tourism sector and even to the collapse of the stock market. The stage was thus set for impoverishment of the country but also the region, since Kenya is, for geographical reasons especially, the gateway for supplies to many landlocked countries in East and Central Africa.

Nevertheless, the Kenyan economy was going through a phase of growth, which began during President Mwai Kibaki's five-year term (2002–2007), both in terms of growth in industries and tourism. This clear recovery, facilitated by the resumption of funding by donors (particularly the International Monetary Fund and the World Bank), was a sign of reassuring stability for investors, which was beneficial for the region as a whole. This meant that the political crisis that Kenya was experiencing tarnished this image and potentially had economic consequences, in the short-term and the long-term, that could not be ignored, both for country and its neighbours.

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YEARS OF GREAT BENEFICIAL ECONOMIC GROWTH

Since 2002 when M. Kibaki succeeded Daniel arap Moi, Kenya enjoyed a real improvement of its economic indicators. These indicators augured well for the future and strengthened its position as a regional leader.

A promising economic and financial situation

Kenya has a diversified¹ industrial foundation and of a dynamic educated middle class. It is for this reason the logistical distribution hub (sea port and airport) of East Africa, whose market it penetrates with ease. Finally, Nairobi is a relatively robust financial centre at the level of the whole African continent.

Since 1993, the country opted for a market economy which is more open to the outside world, abandoning strategies based on import substitution. Whereas the tools of essential control of balance of payments and protection of its local industry depended on government controls (and especially the use of licenses),² the main instrument of commercial politics in Kenya therefore became its common external tariff in line with GATT followed by WTO³ prescriptions, which should adjusted downwards within the East African Community (EAC).⁴

¹ Kenya can depend on its performing agro-food industry in which big companies are involved. The country also has manufactured products and enjoys highly developed mass tourism.

² Importing companies needed government approval to buy some foreign products.

³ From 1993 (with effect from 1995), the World Trade Organization (WTO) replaced the General Agreement on Tariffs and Trade (GATT).

⁴ The East African Community (Kenya, Tanzania, Uganda, and Rwanda and Burundi since 1 July 2007), which was formally relaunched on 15 January 2001 would like to go beyond the common market stage by stressing more on the coordination of regional policies, especially infrastructure, through institutional cooperation. The political crisis, which affected the member countries in various ways, is a test for this organization. Will it be able to use its weight to ensure continuity in trade and insist on necessary regional reforms to avoid such deadlocks in future? Its relative silence seemed not to demonstrate this ability in February in 2008.

From the economic point of view, the Kibaki government achievements seem positive. The country resumed a path of growth that is more in conformity with a Developing Country (DC), with growth rates above 5%. This is sharp contrast strongly with the end of D. arap Moi's rule when the rates revolved around zero per cent⁵. Moreover, Kenya is characterized by a constant increase in the standard of living indicator; its GDP per capita in parity with the purchasing power increased from 1,250 dollars in 2001 to 1,786 dollars in 2006⁶ (380 to 580 current dollars). Particularly worth noting is the fact that these results have been obtained with donor support of about 1% of GDP compared to about 10% donor support for neighbouring Tanzania. In this context, Kenya is cited as an example for the other African countries.

⁵ The volume of GDP growth rate in Kenya was 1% in 1999, 0.5% and 0.6% in 2001 (World Bank).

⁶ World Bank, 2007.

Table 1: Changes in Kenyan economic and social indicators

	2000	2001	2004	2005	2006	2007 Forecast
1. "Magic Square"						
Growth rate of the GDP in volume 1 (%)	0.5	0.6	3	4.9	5.7	5.3
GDP per capita (in PPP2 dollars)	1200	1250	1270	1280	1786	
GDP per capita (in current dollars)	350	380			580	
Inflation rate (%)	6.1	3.3	11.4	10.3	14.5	12
Trade balance (% of the GDP)	- 8		- 10.1	- 11.6	- 10.1	- 8.9
Current balance (% of the GDP)	- 2		- 2.2	- 2.6	- 2.8	- 3.4
2. Public Finance						
Budget Deficit (% of the GDP) with grants	Without grants		2.1	2.41	1	4.16
	With grants			1	0.1	3.3
Public Debt (% of the GDP)				55.57	47.74	
IDE* (in billions of dollars)	110.9	53	46	21.2		
3. Social Indicators						
Primary School (rate of registration)	68		76.4	82.1	83.2	
Life Expectancy (in years)	48.4			49		55.3

Key for Table 1:

*IDE: Foreign Investments. Source: World Bank (2006), OCDE⁷ (2007).

NB: Every financial year stops in August of each year in question.

⁷ Cooperation and Economic Development Organization.

The direct consequence of this economic growth is, however, the sinking of the commercial deficits. In 2006, the country had a deficit of nearly 9% of its GDP⁸ in spite of surplus in the balance of services (especially tourism) and two-digit inflation (14.5% in 2006). Paradoxically, this result, which was initially disappointing, was an expression the vigorous recovery of the Kenyan economy, which has to import all its oil. Finally, the last point about “Kaldor’s magic square,”⁹ the unemployment rate quickly decreased. Even though it rose officially to 40%, the amount of contribution by the informal sector, which is by definition unquantifiable, was so high that this figure lost its relevance. In Nairobi, for example, two out of three people work in the informal sector.¹⁰ Public finances remained sustainable in the eyes of the IMF in spite of the deteriorating situation,¹¹ mainly due to funding for free primary school. The flow of foreign direct investment remained positive but was on a sharp decline (21 billion dollars in 2005 compared to over 100 billion in 2000) during M. Kibaki’s term. This decline can be explained both by recovery by the closest neighbours, Tanzania and Uganda, which had regained political stability by adhering to economic liberalism, and by a certain tendency by the country be too risk-averse to open up to the foreign capital. In this connection, there has been significant change in legislation to address the situation, including the simplification of administrative procedures by creating a one-stop shop to process foreign investment applications. The value of foreign investment passed the US\$ 100,000 mark. Nevertheless, evidence revealed reticence over possible foreign take-over of Kenyan companies (a practice that did not impede Kenyan investors in Uganda

⁸ World Bank (2007).

⁹ Kaldor’s magic square includes the four objectives of conjunctural policy, which is GDP, inflation, employment and external balance.

¹⁰ Government of Kenya, *Economic Survey*, Nairobi, Government Printers, 2003.

¹¹ Quadrupled deficit was observed between 2005 and 2006. However, at the beginning of M. Kibaki’s term this deficit, without grants, had reached 9% of the GDP for the 2002/2003 financial year.

and Tanzania in any way). The social situation remained fragile,¹² however, with inequalities which were already high at the beginning of M. Kibaki's term (the country was ranked tenth on the world list of the countries with the highest level of inequality in terms of wealth) worsening and the Human Development Indicator (HDI) continuing to drop since 1990.¹³ It is true that when a poorly performing economy begins to grow very quickly, as was the case in Kenya, the inequalities become more pronounced. The growth, which was concentrated on the service industry, only benefited a part of the population, which was close to the president and those working in expanding sectors (banks, tourism firms and communication agencies), while the poorest classes experienced reduction in their purchasing power. Kenyan youth, who make up the majority of the population, felt particularly neglected, even though better education had given them hope of having a better life than their parents. In a country where life expectancy is 55 years, the persistent under-employment in this section of the population can only be troubling.

These favourable growth rates can be explained by contribution from some very dynamic sectors. They should help Kenya become, by 2030, a low-income to a medium-income country (+ US\$ 765 per capita per year from 1995).¹⁴ The primary sector is one of these dynamic sectors.

¹² The rosy economic situation that Kenya had before the elections (growth attained 5.3% in volume for the 2006/2007 financial year) had not changed in any way the inequalities among its people. Kenya is among the group of ten countries on earth where social disparities are the worst, with incomes among the richest being 56 times higher than the incomes among the poorest, according to a United Nations report in 2004. 51.8% of the people live under the poverty line (OCDE, 2006).

¹³ The HDI index includes GDP per capita, the literacy rates and life expectancy. From 0.56% in 1990, it was 0.53% in 2006 and with wide gaps, in Nairobi (0.75 which is the medium level in Turkey), in Mombasa (0.65, the South African level) and in north and western parts of the country in Busia and Turkana (0.32, the level in Mali and Niger). Recent efforts in the education sector in Kenya should, however, improve this in the medium term.

¹⁴ World Bank classification: Countries with low revenue below 765 dollars in 1995; countries with medium revenue between 765 and 9,386 dollars in 1995; countries with high revenue above 9,386 in 1995.

It accounts for 27.5% of the GDP¹⁵, and undertakes crucial activities which attract foreign exchange either through fishing, coffee, tea or even horticulture. For example, since 2005, Kenya is the first world exporter of black tea, which is the third source of foreign exchange for the economy. Tea production takes place in the Rift Valley, among other places. In the Kericho area, production has improved by 16% since 2001 (despite a decrease in 2006 due to drought), representing a growth of 41% in value owing to the rise in world prices. Another example of the most dynamic sectors in the last few years are horticultural crops, including about hundred products (fruits, vegetables, flowers), making the sector the country's fourth source of foreign exchange. Horticulture rose by 64% in 2007 thanks to high international demand and poor climatic conditions in Europe¹⁶. These products raked in close to 50 billion Kenyan Shillings (Kenya shillings)¹⁷, including 63% from cut flowers alone¹⁸. These products, exported virtually exclusively to Europe, account for 14% of the country's total exports, which is 25% of the European market. These crops are grown around Lake Naivasha, in Thika near Nairobi, in Kitengela, and also around Mount Kenya, Lake Nakuru and recently in the Rift Valley around Eldoret.

The secondary sector, which has more often than not a wait-and-see attitude and accounts for 17.6% of the GDP, has begun to rejuvenate, especially with the resurgence of companies in the agro-food industry. Big groups of companies have emerged like the Kenya Meat Commission, Mumias Sugar Company, Kenya Seed Company, or New Kenya Cooperation Creameries. However, there is hope, especially from the tertiary sector that represents now accounts for close to 55% of the GDP. It is dominated by tourist activities which are growing rapidly (+10% in 2006 and second source of foreign exchange

¹⁵ World Bank, 2006.

¹⁶ *Business Daily*, 28 January 2008.

¹⁷ To the tune of 770 million dollars.

¹⁸ Central Bank of Kenya, 2007.

after the remittances from the Kenyans in the Diaspora¹⁹). Following the Al-Qaida attacks in Kenya in 1998 and 2002²⁰, income from this sector had fallen to 190 million euros in 2002 and then rose to 617 million euros in 2006 (this triple growth is proof of real dynamism). The year 2007 was a record year with over a million tourists visiting and a 15.4% rise in profits. For their part, new information and communication technology (NICT), as well as banking²¹ and financial sectors experienced a remarkable boom. Mobile telephony,²² for example, grew rapidly with an average annual growth rate of 67% since 2001 and encouraging prospects with regard to investments dedicated to infrastructure.²³ Moreover, the Nairobi Stock Exchange experienced growth of 280% in five years, which attests to the confidence of the business community, and enabled the Kenya Shilling (Ksh) to appreciate during the whole period strengthening against the dollar from Ksh 78.6 in 2002 to Ksh 63.35 in December 2007, an appreciation of nearly 20%. Likewise, in the “country risk” ranking, according to *Doing Business* in 2008, Kenya rose from 82nd to 72nd position between 2006 and 2007 due to marked improvement in access to credit, which encouraged incorporation of companies at the same rate.

¹⁹ 900 million dollars in 2006, the first source of foreign exchange for country (French Ministry of Foreign Affairs).

²⁰ On 7 August 1998, two simultaneous attacks rocked US embassies in Nairobi and Dar es Salaam (Tanzania), killing 224 people and injuring several hundreds of people. On 28 November 2002, a suicide attack on a hotel in Mombasa caused 18 deaths. A rocket attack on an Israeli airline aircraft shortly after managed to plunge Kenyan tourism to its darkest period.

²¹ The country has the highest concentration of banks in the region: 45 commercial banks make up the banking sector (Barclay Bank, Standard Chartered Bank), State banks (Kenya Commercial Bank, National Bank of Kenya), family banks (Kantaria) complemented by a number of non-banking institutions. There are also 95 foreign exchange bureaux.

²² The country two large companies are Safaricom and Celtel Kenya. They have managed to take advantage of infrastructural obsolescence of fixed telephone service by State-owned Telkom Kenya to highly develop themselves, starting with one million subscribers in 2002 and increasing them to nearly eight million in 2007.

²³ Improvement of the GPRS and EDGE networks by Safaricom and Celtel operators is ongoing. The extension of the 3G networks and fibre optics is also ongoing (Kenya Data Networks).

A pole of regional stability

In the East African region, Kenya is characterized by relative stability. Indeed, the country has never been in open conflict with its neighbours and acts as a rear base for refugees from the Somali and Sudanese wars. It has also set an example on several occasions as a peace facilitator, especially within IGAD.²⁴ This intergovernmental authority consists of seven northeast African States and especially works towards the resolution of the crises in Sudan, Somalia and Ethiopia.

Kenya, an economic leader in East Africa, is also an initiator of the regional integration process as a member of the EAC (East African Community) and of the Common Market for Eastern and Southern African States (COMESA)²⁵ (34% of intra-regional trade). It has contributed to the opening up of markets by lowering its common external tariff and exporting more than 42.6% of its products to Africa, close to 2/3 of which goes to Uganda and Tanzania.

In this context, Kenya affirms its regional economic domination by controlling an important transit trade towards several landlocked countries in the region. This trade is equivalent to a quarter of Uganda's or Rwanda's GDP and a third of Burundi's GDP. This trade is in a number of basic essential commodities.²⁶ The Kenyan regional platform offers a generally high level of infrastructure, road as well as sea port and airport. For example, the port of Mombasa is the inevitable transit point for the region's imports as well as exports and makes it possible to access a large part of eastern Africa (Uganda and the Great Lakes)²⁷ via the use what is commonly known as "the northern corridor",

²⁴ Inter-Government Authority on Development.

²⁵ An organization that is supposed to promote regional integration through trade and investment in southern and eastern Africa. The member countries are Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Kenya, Madagascar, Malawi, Mauritius, Uganda, Rwanda, Seychelles, Sudan, Swaziland, Zimbabwe, Zambia and Libya.

²⁶ Oil products, companies' capital assets, consumer products.

²⁷ World Bank, 2007. Exports to Uganda increased in 2007 to 656 million dollars, 80% of this are re-exported oil products; at the same time, exports to Rwanda increased to 112.5 million dollars.

which means combining road and rail to Kampala, complete with a Mombasa–Eldoret pipeline).²⁸ Several Kenyan companies therefore assume the role of regional leaders like the Kenya Airways. As the region's dominant airline, it interconnects the whole of eastern and southern Africa in addition to big international destinations, even though financial difficulties have made its position relative for some years now.

A CRISIS WITH MULTIPLE REPERCUSSIONS

M. Kibaki's swearing-in to serve a second presidential term on 30 December 2007 triggered a period of high tension and violence. The political situation became very unstable. Economically, as Kenya suffered short-term large scale damage, the surrounding countries were also affected by the effects of this crisis, thus plunging East Africa into uncertainty.

The assessment of the effects of the January 2008 events in Kenya is very delicate. A certain historical perspective is evidently necessary to measure the consequences in precise terms; Finance Minister Amos Kimunya only talked about it recently. However, we can already pinpoint the main obstacles at the national then regional level.

At national level

Right from the start, the Kenyan crisis was characterized by an escalation of violence in several parts of the country: in western parts around Kisumu, in the Rift Valley and in some parts of Nairobi. One can consider as the very first victims the business people, who very quickly suffered slow business, at best, or at worst, a total disappearance

²⁸ Refer to R. Porhel, 2004.

of their merchandise. In the initial days, 184 stores were looted and 80% of SMEs were affected in Kisumu.²⁹ Eldoret, which experienced remarkable growth these last few years and had the potential of overtaking Nakuru, its neighbouring big town in the Rift Valley, bore the full brunt of the crisis as well as the flight of workforce and investors. The effect on employment was disastrous (several thousands of jobs were lost in Kisumu and Eldoret). All regions were affected by a shortage of essential goods. Thus, the Turkana District (to the north of the country), which is situated in an arid area and depends on other provinces for food products, experienced a 200% inflation in the prices of fruits and vegetables due to deterioration of transportation, worsening the shortage of these products. In Kibera, the biggest slum in Nairobi, water and electricity were disconnected in the first week of the clashes and the Toi market, the main supply point for residents, was completely razed down by rioters. *“There were 3000 traders here, and 3000 others depending on the market for their livelihood. If you count their families and the customers, 200,000 people were dependent on this place”*, explained the chairman of the association of traders at the market, Ezechiel Rema.³⁰ Millions of shillings worth of food and clothes went up in smoke on the first Sunday when the results were announced after rioters fired the stalls belonging to members of the Kikuyu ethnic community, to which President M. Kibaki belongs. Farmers no longer had access to markets, to which their daily survival depends.

In the second week of the crisis (beginning 7 January), deterioration in the supply of oil products very quickly led to a crisis in all other

²⁹ *Daily Nation*, 11 January 2008. Three supermarkets, two petrol stations, restaurants and small traders' stalls were destroyed. The estimation of the losses during the first five days was 44 million dollars but the cost rose rapidly. The “Kisumu City Business District Association” even considered that twenty years would be the sufficient time to recover from the loss. Even though it is an exaggeration, this figure can give us an idea of the scale of the damage.

³⁰ *Daily Nation*, 3 January 2008.

sectors. Oil is indeed an input³¹ for most activities. Since the supply points were the towns that were the most exposed to the violence (Kericho, Bomet, Mumias, Kisii or Eldoret for example), general activity was observed to slow down and hardly felt the resumption of transportation in mid-January. Let us look at the effects on sectors that were most exposed to the crisis: tourism, the milk industry, the agricultural sector, small enterprises and financial markets.

Financial markets which bowed but did not plunge

As soon as the Nairobi stock market opened on 2 January, the sales plunged and the Nairobi Stock Exchange (NSE) fell by 277 points, representing a loss of 5% value (about US\$ 629 million or Ksh 40 billion) of total stock capital (US\$ 12 billion), which revealed a loss of confidence by investors. The following day, dealing was suspended at mid-day when the twenty share index dipped to 5,015.50 points whereas it had passed the 5300 points in the course December 2007. This fall affected small as well as major investors.³² Similarly, the Kenyan currency, which had appreciated during M. Kibaki's first term, was under siege on the market. It depreciated to depths close to 10% within a few days, plunging against the dollar from Ksh 62.68 on 24 December to Ksh 68.5 on 7 January. To reassure investors, and in spite of this decline in the main financial indicators, NSE Chairman Jimnah Mbaru tried to remain optimistic by maintaining that the targeted growth of 8% in the 2007/2008 financial year was justified and went on to predict growth for the NSE index from 30 to 40% citing fast recovery from the damage and the redirection of efforts towards the devastated areas. Terry Ryan, independent economic adviser to the Central Bank of Kenya, was more conservative and anticipated by 10

³¹ An input is a product used in the manufacture of other products.

³² CNN, 11 January 2008. The big losers were: East African Breweries, Barclays, Kenya Commercial Bank, Ken Gen, Equity Bank, Mumias.

January a reduction in the GDP growth rate of 4 to 5 points because of the sectors affected by the crisis.³³ These sectors were indeed some of the most performing in the country's economy, namely agriculture, tourism and financial services (31% of the GDP).

After the first month of crisis it could be said that its impact on the financial markets needed to be qualified. On the one hand, the Stock market stabilized around 5000 points for its main index in mid-February. In fact, the call by Citigroup for a certain strict adherence to economic fundamentals and the injection of funds by Finance Minister A. Kimunya, obtained in part from the privatization of Telkom, helped to maintain the market and the national currency under Ksh 70 to the US dollar.³⁴ Thus, in spite of the rise in bad debts, pressure on the interest rates was not excessively high at 0.5 points.³⁵ This could have, however, contributed to the slow investment in an uncertain and especially more expensive environment. Capital inflow expected from financial transactions planned by the government faced fresh delay. This is what happened to the joint venture between Safaricom and Vodafone which still seemed deadlocked throughout February whereas the market awaited it to sustain the transactions. It could be assumed that the set of the privatization programs were also doomed to delay. The other big transaction which involved paying out 300 million dollars in international debentures in March 2008, in order to finance infrastructure programs, also was in danger of failing. Although the finance minister announced on 27 December that the country enjoyed a rather promising international rating (B+),³⁶ the current situation

³³ *Daily Nation*, 11 January, 2008.

³⁴ The fact that the Diaspora continues to transfer capital is aid that cannot be ignored in maintaining the value of money on the market. *Business Sunday Nation* 25 February 2008

³⁵ The rate for 91 days and 184 days were 6.86% and 7.84% respectively on 9 December and they rose to 7.33 and 8.35 on 17 February.

³⁶ The rating is the ranking of countries according to risk and give information for investors.

was a reverse, this was at least the point of view expressed by Betty Maina, chief executive of the Kenya Association of Manufacturers and of the chairman of the Corporate Council of Africa,³⁷ Maurice Tempelsman. For its part, the Stephen Hayes group, which is among the largest American companies,³⁸ called upon investors to withdraw from the country and opt for new steadier markets. So at the end of February the situation remained obviously fragile, in anticipation of a political resolution of the crisis. The agreement to share power in the coalition government signed on 28 February between re-elected President M. Kibaki and opposition leader Raila Odinga restored relative confidence in the markets, and the sale of Safaricom shares was thus planned to be held between 28 March and 23 April 2008, but it would be adventurous to think that a return to normalcy could be achieved quickly.

A particularly affected tourism sector

By 3 January, during the middle of the high tourist season in Kenya, a high number of flights from most of the English tour operators (the main “supplier”, with 290,000 tourists per year), quickly followed by other countries (France, Italy, Netherlands, Germany and Portugal), caused an immediate loss estimated at about Ksh 4 billion and 120,000 jobs from the first week, including 20,000 for the hotel industry alone.³⁹ Less than 25% of the forecasts seemed to be assured whereas the sector raked in US\$ 916.3 million in 2007. The airlines, including Kenya Airways, directly bore the brunt of the backlash. The national carrier anticipated a high fall in its turnover, and cancelled some flights at once, such as Mombasa-Johannesburg or Mombasa - London.

³⁷ AFP, January 2008.

³⁸ Among the members of this group are namely Boeing, Cargill, Cisco, Exxon Mobil, General Motors, Coca Cola and even Starbucks.

³⁹ *Daily Nation*, 15 January 2008.

After the first fifteen days of the crisis, with the political stand-off still in suspense and political and social frustration taking an ethnic dimension, the sector, whose contribution is 15% to national wealth, found itself in a particularly precarious situation. The hotel occupancy in Mombasa remained lower than 80%⁴⁰ recorded the previous year where the rate of occupancy passed the 80% mark. The situation in Nairobi was hardly better as occupancy oscillated between 15 and 35%. A loss of 78% of income for the first three months is to be expected at Ksh 5.5 billion per month out of a total of Ksh 65.4 billion in 2007 (a quarter loss in 2007), according to Ongong'a Achieng (Executive Director of Kenyan Tourism Board). The estimates for this first quarter were 314,995 people and the adjustments bring it to 27,000 or a reduction of 91.4%. The cruise calendar which extends from January to April was also affected by the same degree of cancellations. Finally, the national parks recorded a reduction in the number of visitors. For example, the Tsavo-East National Park, which receives 700 visitors daily during this period, received 170 and lost $\frac{2}{3}$ of the revenue.⁴¹ These successive setbacks led to 250,000 job cuts in the tourism sector, a figure that could prove to be even higher.⁴² On the other hand, the fall in the number of visitors since December 2007 had a considerable impact not only on financial income, but also on a number of initiatives to conserve national parks and other protected areas run by the Kenya Wildlife Service (KWS).⁴³ Yet, leaders remained optimistic and cited

⁴⁰ "Conflicts Threatens Kenya Tourism", Mc Clatchy News Services, 19 January 2008.

⁴¹ *Daily Nation*, 15 January 2008.

⁴² *The East African*, 28 January 2008.

⁴³ Statement at the Berlin tourism exhibition by Achim Steiner, executive director of UNEP (United Nations Environment Programme), 7 March 2008.

the examples of Morocco and Egypt.⁴⁴ Under similar conditions, they were able to recover fast enough. The arrival of 175 tourists from Europe in mid-February and the arrival of the first cruise ship, the “Royal Star”, at the Mombasa port were therefore considered the first sign of sector recovery. Following the signing of the agreement between M. Kibaki and R. Odinga, hotel reservations rose ahead of the Easter holidays. They were mostly made local tourists who took advantage of the low price policy, 30% reduction, or even invitation from hotels to spend the holidays by the sea. Though this politics was a transitory measure while waiting for the return of foreign tourists, professionals, according to Kuldip Sondhi, director of the Mombasa and coast tourism association, were aware that Kenyans should contribute more to the sector’s revenue in future.⁴⁵

An agricultural sector punished by disruption of transport

Through its persistence, the crisis affected the agricultural sector in three ways. First of all, farms situated in the most risky districts in the north of the Rift Valley (such as Kericho, Bureti and Bomet), were been completely destroyed in the numerous arson attacks and looting associated with the clashes. Then, the inability by staff to commute to their places of work or, even more dramatic, the feeding of the high number of victims reduced activity.⁴⁶ Finally, the rise in crime through

⁴⁴ In Morocco, the 2003 attacks on a hotel and restaurants patronized by foreigners and Jewish establishments in the city of Casablanca caused 45 deaths, including 12 suicide bombers. Yet Moroccan tourism experienced a boom during the first ten months of 2004, with 17% rise compared to the same period the previous year. In Egypt, an attack was carried out in October 2004 on Taba along the border with Israel, hitting Hilton Hotel, which was mainly occupied by Israelis, leading to the death of 30 people. Despite the attack the sector realized a spectacular growth of 34% the same year.

⁴⁵ *Daily Nation*, 20 March 2008

⁴⁶ Unilever Tea suffered from 11 % drop in production representing a loss of Kshs 30 million, accompanied by a slump in the value of its stocks.

activities of organized gangs contributed to worsening insecurity on the main roads. An example is the erection of road blocks on the Eldoret–Nairobi road via Nakuru. The sector could not withstand these three causes: 20% of the harvest in the north Rift,⁴⁷ the country's bread basket, was destroyed and the land could not be prepared during the January rains due to the displacement of 20,000 families. While taking into account the forecasts to lower maize harvest by between 15 and 70% (in southern Kenya), there were serious concerns over food supplies for 2008.⁴⁸ During the first week of crisis, tea plantations⁴⁹ were adversely affected whereas horticulture (apart from scores of farms in the north Rift) could more or less maintain its level of activity thanks to the social policies on some farms around Naivasha,⁵⁰ which consisted providing on site accommodation for their employees. But very quickly the escalation of violence caught up with this sector, particularly on Sunday 27 January,⁵¹ and production suddenly collapsed.⁵² For the whole range of agricultural activities, it is the third phase of the impact that became delicate to manage, meaning the transportation of both the necessary inputs purchased for production (fuel, packing material, manure, etc.) and the distribution of the harvested crop. The tea plantations were able stock their produce initially but this strategy quickly became futile considering the length of the crisis. The farms, whatever their produce, were therefore forced to transport their produce

⁴⁷ "Political unrest sparks food insecurity, livelihood losses", Food Security in Kenya, 14 January 2008.

⁴⁸ "Kenya faces famine threat", *Daily Nation*, 23 January 2008.

⁴⁹ Tea auctions were interrupted as a large part of the production came from the Rift Valley. Consequently, the 10% reduction in Kenya production caused an increase in the prices, according to FAO (Food and Agriculture Organization).

⁵⁰ According to Richard Fox of Homegrown Limited Corporate Responsibility, 80% of the workers continued working.

⁵¹ Naivasha town suddenly went up in flames on 27 January when groups of Kikuyu youth in support of President M. Kibaki began attacking members of the opposition leader R. Odinga's ethnic community. Ten people who attempted to escape from the Kikuyu attackers were burnt alive in a block of houses.

⁵² The losses were worth 10 billion shillings, according to Jane Ngigi, director of the Kenya Flower Council.

under escort like in Naivasha, Nyahururu, Limuru, Kiambu or Athi River. This new constraint not only raised the cost of transportation with insurance premiums in sky-rocketing rise but also prolonged the delivery times within a given period (February, March) where the flower business achieved 40% of its turnover. Thus the tea sector, which could have received a boost in exportation from the depreciation of the national currency, incurred losses in several billions of shillings.⁵³ Milk production, which halved,⁵⁴ experienced the same problems, bearing in mind that most of the resources were located in the Rift Valley. The prospects of resumption remained even fuzzier when demand shot up, especially from refugees, weakening some companies, including New KCC, which was fighting to regain some financial stability. Despite the losses estimated in billions of Kenya shillings, the Kenya Flower Council maintained that the sector copped quite well with the events, compared for example to the tourism sector, and could become even an interesting alternative for investment. European clients still expressed concern on Kenya's capacity to provide a steady and quality supply in the long term⁵⁵ and threatened to turn more to the growing competition in Ethiopia. To this contrasting image Eldoret area harboured ambitions of becoming an important centre for horticulture but the chronic instability could new initiatives. The first Eldoret–Netherlands airlift via Nairobi in the second week of February could just make the town attractive once again.

Small enterprises teetering on the brink of bankruptcy

As a result of direct consequences of the crisis, the small enterprises sector was inevitably faced with defaulting in the repayment of micro-

⁵³ "Tea sector limps on as workers trickle back", *The East African*, 14 January 2008.

⁵⁴ *The Standard*, 29 January 2008.

⁵⁵ "Kenya flower buyers get jitters despite continuing supply", *The East African*, 28 January 2008.

credit to financial institutions. The enterprises found it impossible to repay their loans,⁵⁶ which according to Samuel Deya,⁵⁷ put these financial establishments in difficulty and to a lesser degree the banking sector.⁵⁸ Anne Mutahi, chairperson of the Kenyan Association of Micro-credit Institutions (AMFI) admitted that 80% of credit, on a portfolio of Ksh 25 billion, will be re-scheduled but the micro-credit sector had resolved to write off 10 to 15%, representing a loss of Ksh 4 billion.⁵⁹ Sustaining the small enterprises is very vital for the Kenyan economy because they contribute to 18.4% of the wealth, and even 25% outside agriculture. They also represent 74.2% of employment for the most underprivileged areas. The areas in question are mostly the slums of Kibera and Mathare in Nairobi, Eldoret, Nakuru and Naivasha towns in the Rift Valley, Kisumu in Nyanza, Kakamega in Western Province and finally Mombasa in Coast Province. A mechanism of international aid was put in place in the course of January for cushion the most seriously affected cases but it could soon become insufficient.

For public coffers, this crisis from the very first week resulted in a daily loss of Ksh 2 billion (US\$ 31.45 million) in fiscal resources.⁶⁰ However, we should add US\$ 200,000 in customs revenue coming from trade with Uganda. In the end, the State, which had a Ksh 109 billion budgetary deficit for 2007/2008 financial year, could foresee financial difficulties to implement its policies, for example funding free secondary education. The sharp decrease in fiscal revenue for the first quarter of 2008 due to disruption of industry, transport, tourism, banking and horticulture, reduced the government's room for manoeuvre when the situation required high levels of investment,

⁵⁶ Many companies applied for re-scheduling or the cancellation of the interests for this period. *Business Sunday Nation*, 18 February 2008.

⁵⁷ Samuel Deya is the executive director of the Adock Timo, one of the main micro-finance institutions in Kenya.

⁵⁸ *Business Sunday Nation* 18 February 2008.

⁵⁹ *Business Sunday Nation* 18 February 2008.

⁶⁰ Kenya's Business Community, January 2008.

and could force it to resort to internal and external borrowing.⁶¹ Moreover, though mediation led by Kofi Annan finally succeeded and managed to get the country out of political limbo, threats by donors to withdraw once again from the country did not go away after all. Thus, the European Union, which provided over € 290 million (equivalent to Ksh 400 million) between 2002 and 2007 could freeze or at least reduce the new tranche of € 383 million (US\$ 540 million) planned for the 2008–2013 period, leading to the cancellation in one stroke of many infrastructure projects.⁶² The World Bank, which funds 16 projects in Kenya to the tune of US\$ 919 million, as well as three infrastructure projects in the region to the tune of US\$ 260 million, also considered the possibility of reducing its contribution.

At regional level

Landlocked countries quickly crippled

“When Kenya catches a cold, other countries (Uganda, Rwanda, Burundi) catch pneumonia” the Ugandan media observed.⁶³ A look at the political and economic situation, the Kenyan crisis had an immediate impact on economies of the landlocked countries (Uganda, Rwanda, Burundi),⁶⁴ close to 100 million people depending on Kenya for the supply of essential products, or fuel items, including oil. Uganda proved to be very vulnerable. Right from 1 January, the country closed its border in Busia to keep out violence, stations of big oil companies (Shell, Caltex, Total, Mobil or Gapco) doubled the price of petrol per litre (from 2400 to 6000 Uganda Shillings),⁶⁵ and increase the price of diesel by

⁶¹ International Crisis Group: ‘Kenya in crisis’, *op.cit.*

⁶² *Daily Nation*, 14 January 2008.

⁶³ *The Monitor* 14 January 2008.

⁶⁴ Kenya is the transit point for a quarter of Rwanda’s and Uganda’s GNP, a third of Burundi’s GNP.

⁶⁵ From 1.34 to 3.36 dollars. *The Monitor* 9 January 2008.

10%. Moreover, this shortage of fuel forced the country to suspend some internal flights.⁶⁶ The inflation also affected the main products imported from Kenya, following the depletion of stocks in all shops in the city of Kampala. The price of some products, like soap, increased by 100%.

Continued violence throughout January sustained by activities of armed youth groups, particularly along the Eldoret-Busia road, more or less paralyzed all the road as well as rail traffic along the northern corridor,⁶⁷ having a double effect of blocking the port of Mombasa and adversely affecting the intra-regional trade. Thus, the port facilities at the country's second largest city was incapable to manage the continuous flow of containers in spite of help from the port of Dar es Salaam, Tanzania, were quickly overrun. The peak was attained in January with 19,000 containers neglected on the quay of the Kenyan port, whose storage capacity is 7000 per day. The stock has reduced to 11,000 containers since February but remains excessive⁶⁸ for the normalization of activity. In fact, the situation improved slightly since Ugandan Prime Minister Eriya Kategaya's visit to Kenya on 31 January, which ended with the first convoy of trucks escorted by the Kenyan army. However, only a third of the traffic is therefore assured out of the normal 1250 daily trucks, bearing in mind that the cost is raised for security reasons.⁶⁹ Ugandan importers put the probability to receiving goods in good condition at 50%. In this context, the northern corridor, which is already well-known for its administrative lethargy, operates in slow-motion and impacts heavily on the volume

⁶⁶ "Kenya tourism, economy devastated by violence", CNN, 11 January 2008.

⁶⁷ Northern Corridor: Mombasa – Kampala via Nairobi and Eldoret.

⁶⁸ *Daily Nation online*, Business Daily, 9 February 2008.

⁶⁹ 500 dollars per lorry on Mombasa – Malaba/Busia road and 254 dollars between Mombasa and Nairobi. Traffic returned to normalcy very slowly. Malaba recorded a resumption of its daily transactions in mid-February compared to January, rising from 100 to 250. Busia recovered even slower with 150 transactions from 100. The country's business quarters estimated three months for a definite return to fluid traffic, which is the same as the time needed to decongest the Mombasa port.

of trade. Concerning imports, the accumulated delay in the delivery of oil products, apart from the increase in prices, punish all downstream activity that must also to bear with deficiency in the supply of capital goods leading to a rise in technical unemployment and a decline in the turnover of some companies. It is, for example, the case of the Madhvani group of industries, whose forecast of 150,000 tons in its sugar sector transactions will not be possible to achieve due to lack of material. Of more concern, according to FAO, essential food products like cereals (wheat, corn, barley) already in insufficient quantities due to unfavourable climatic conditions, are beginning to miss and could trigger a period of food crisis worsened by the displacement of refugees. Exports involving perishable goods (coffee, tea, fish), or 30% of the GDP, are experiencing a decline whereas insurance companies refuse to take on the transportation charges. Only coffee industry managed to clear a surplus in December 2007 (326,466 bags of coffee compared to 237,168 bags).

Despite this grim situation, Ugandan authorities sought to downplay the effects in their latest report on the impact of the Kenyan violence on the Ugandan economy.⁷⁰ Thus, on 15 February, URA (Uganda Revenue Authority) spokesman Patrick Mukiibi put the scale of the crisis into perspective by revealing that the fiscal results had only marginally been achieved. The decrease is only US\$ 1.34 million on the estimated revenue (-1%), thanks to better internal revenue that made it possible to compensate losses on the customs revenue of about 5.2 million dollars (-7%). The January growth rate will nevertheless be the lowest in eight years but the rate of inflation, which has been boosted by the increase in prices of fuel could be quite low (the month of January was only be characterized by a further one point inflation) following the choice by industrialists to find other alternatives to road transport. Abe Selassie, the IMF permanent representative in Kampala,

⁷⁰ Report by the Uganda Revenue Authority. *The EastAfrican*, 18 February 2008.

still maintained his confidence in the Ugandan economy to cope with this period in view of the proper observance “economic fundamental”, but he recognizes that exposing the country to such risks should lead to review the supply sources and to invest in infrastructure. Some business quarters sought to remain confident while hoping for a redeployment of investments planned for Kenya to other countries of the region but this point of view seems somewhat optimistic: the investors could very well move away from a region whose pole of stability, which hitherto has been Kenya, is experiencing a crisis a way out of which is still not known. The tourist sector is in this respect revealing: cancellations also occurred in Tanzania and Uganda.

The need to find an alternative to the northern corridor

The decision by Rwanda to import part of its energy from the port of Dar es Salaam since the oil shortage⁷¹, the example of the convoy of the United Nations High Commission for Refugees (UNHCR) transporting steel to Ajumani, Uganda, which was rerouted to Dar es Salaam during the crisis at a 20% surcharge and a longer distance that cannot be ignored which finally led to the dispatch of a Ugandan government delegation to the Tanzanian port⁷² on 4 February, to officially inspect port facilities, and at the same time unofficially apply pressure on the Kenyan government, reveal the extreme vulnerability of landlocked countries to the same northern corridor which already in normal times does not ensure efficient deadlines.

The crisis should at least make all the actors realize the need to find the way out the impasse, although the conditions are quite limiting. One way or another, this will happen through the acceleration and a concretization of regional infrastructure projects such as re-initiating

⁷¹ “Business forecast Report for Tanzania ” by Business Monitor International, 2007.

⁷² *The East African*, 12 March 2008.

the second corridor between Dar es Salaam in Kampala via Mwanza, and at the same time ensuring better flow of traffic.⁷³ The first obstacle is releasing the millions of dollars needed for the extension of the pipeline, which now reaches Eldoret, to Kampala and to once and for all overcome the intra-Kenyan quarrels as well as political and financial interests. Secondly, there is need to modernize Tanzanian infrastructure, which are very from the standards of a new East African hub.⁷⁴ The port of Dar es Salaam only handles 165,000 containers per year compared to the 300,000 by Mombasa⁷⁵ and requires a waiting period of two weeks. The state of roads does not allow transit of the heaviest trucks, which must use obsolete railway facilities. In comparison to the northern corridor, the central corridor currently implies a surcharge of US\$ 3000 to US\$ 4000 per container. Consequent investment is therefore indispensable to improve the port's productivity, to modernize the railway line as well as the road network. Finally, there is need to strengthen the fleet in order to transport the goods from Mwanza to Port Bell near Kampala. This ambitious challenge is not new but the emergency of the situation could enable the countries, for once, to overcome partisan interests.

Conclusion

The Kenyan political crisis, since the 27 December 2007 elections, upset the economic and social situation of the country and the region. Due to escalation of violence that cut means of communication, all the economic sectors incurred heavy losses, weakening their financial balance. Efforts by former UN Secretary-General K. Annan, as well

⁷³ Central Corridor: Dar es Salaam–Mwanza–Port Bell–Kampala ; Porhel, R. (2004).

⁷⁴ Hub: A place which collects and redistributes goods and travellers to various directions from a transport network dominated by an airport. This is the case of Nairobi in which a network of tarmacked roads, railways and pipelines converge.

⁷⁵ "Business Forecast Report for Tanzania" par le Business Monitor International, 2007.

as pressure from donors, to help negotiate an agreement between President M. Kibaki and his rival R. Odinga, do not mean that the country will quickly recover from the situation. At the national level, the finance minister officially revised the predicted growth rate of the GDP for 2008 by three points (5% instead of the predicted 8%). Moreover, poor weather conditions do not augur well for this year's production by agricultural sector. At the limit, the immediate announcements of fundamental reforms, redistribution measures in respect of underprivileged regions and those left out by the growth, will be necessary to slow down or stop the build-up of violence. According to Steven Smith, chairman of the Kenya Association of Manufacturers, there will be need for 12 to 18 months to recover the levels of activity achieved in 2007. At the regional level, business environment realizes that the country's regional economic power has deteriorated.⁷⁶ The danger of Kenya losing its status as the hub for the landlocked countries⁷⁷ does not seem credible in the near future, considering the central corridor's lack of competitiveness, but in a more faraway future it is possible that the power relations change. All depends of the capacity of Kenya's partners (Uganda, Tanzania, Rwanda and Burundi) to weigh in regional and international institutions to clear the necessary funding for the modernization of the port of Dar are Salaam.

⁷⁶ Patrick Obath is the chairman of the federation of Kenyan employers.

⁷⁷ Terry Ryan economist at the University of Nairobi. *News Voacom*, 11 February 2008.

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INSTITUTIONAL SHORTFALLS AND A POLITICAL CRISIS

Anne Cussac*

Only a few days after he announced the controversial results of the 2007 presidential election, Samuel Kivuitu, chairman of the Electoral Commission of Kenya (ECK), acknowledged making the declaration under joint pressure from Mwai Kibaki's Party of National Unity (PNU) and Kalonzo Musyoka's Orange Democratic Movement-Kenya (ODM-K) and said on 1st January 2008: "*I don't know whether Kibaki won the election.*"¹ Because of its suspected involvement in rigging, the ECK therefore appeared to be among the main culprits in the political crisis.

After the opening of the democratic space and the reintroduction of the multi-party system, a number of reforms had been made to enhance independence and capacity of the electoral commission. But these structures were merely based a gentleman's agreement, and were not entrenched in the law, the only way of ensuring strong legal backing. Similarly, there exists a whole legislative framework designed to guarantee free and fair elections and to deal with possible petitions that may arise after the announcement of election results. However, the rules of the game and the weakness of institutions charged with implementing these measures proved to be a limiting factor in the ECK's effectiveness. Evidence also revealed practices aimed at making

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¹ S. Kivuitu announced the results of the presidential poll on 30 December 2007. As justification, he confessed giving in to pressure in order not to be considered a coward. However, he would have been considered much more courageous had he weathered the storm and waited to be sure of the results before announcing the winner of the presidential poll. *The Standard*, 2 January 2008.

the ruling party all-powerful and, apart from the political crisis and of the violent clashes that ensued, the controversial 2007 December elections not only uncovered a number of institutional shortcomings, within not only the electoral commission, but also within the judicial system and the Kenyan political system at large.

ELECTORAL COMMISSION AT THE CENTRE OF CONTROVERSY

Although the ECK had always been accused of not carrying out its duty with impartiality, its good performance was recognized for the first time during the 2002 polls which was marked by a smooth political transition. Nevertheless, during the entire 2007 campaign period, one of the big questions was the Commission's ability to guarantee free and transparent elections. While we agree that it satisfactorily presided over campaigns and the voting exercise, the manner in which S. Kivuitu declared M. Kibaki's re-election as president cast doubt on the commission's credibility and the commissioners' independence from the government.

Questions over the unilateral appointment of electoral commissioners

The existence of the ECK is in accordance with Articles 41 and 42 of the Constitution, which stipulate that its responsibility shall be to organize and oversee the electoral process.² In theory, with regard

² Article 42(a) of the Constitution stipulates that its functions, which include: "(a) registration of voters and maintenance and updating of the voters' roll; (b) manage and supervise the presidential, parliamentary and civic elections; (c) promote free and fair elections; (d) promote voter education throughout Kenya; and (e) any other function stipulated by the law."

to independence, the institution must not be under the authority of any other organ.³ Commissioners are appointed by the President for five years and its Chair and Vice-Chair must be qualified to be judges of the High Court. Evidence shows that until in the 1990s, the jurisdiction of ECK commissioners was confined to defining borders of electoral constituencies, while the other organizational roles were the responsibility of the provincial administration and the Supervisor of Elections. However, as the 1992 general elections approached, the Election Laws Amendment Act No. 1 was passed and this position was abolished and all powers of the Commission were restored. Justice Richard Chesoni was appointed Chairman of the ECK, which then consisted of 11 commissioners, all appointed by Daniel arap Moi.⁴ He officially announced the general elections date later that year, a prerogative that had hitherto been the President's.⁵ In spite of these apparent reforms, the whole of the 1992 election campaign period was marked by opposition concerns over the institution's lack of independence. Oginga Odinga, M. Kibaki, Johnstone Makau and David Mukaru-Ng'ang'a initiated a petition to press for the removal of R. Chesoni, who was considered to be President Moi's man.⁶ Their fears were confirmed during the campaigns and the voting process: the ECK appeared to be in favour of KANU and could neither guarantee free and fair elections nor prevent rigging.

A few years later, as the 1997 elections approached, the Inter Parliamentary Parties Group (IPPG) negotiations led to the adoption of a body of reforms that would guarantee a more democratic government and establish a freer and more level political playing field. This was followed by the repealing of a number of laws restricting civil liberties

³ The provisions of Paragraph 9 of Article 41 are: "In carrying out its duties under the current Constitution, the Commission may not be subjected to instructions from any person or authority."

⁴ D. Throup and C. Hornsby (1998), p. 244–245.

⁵ *Ibid.*, p. 247.

⁶ This was rejected by the High Court.

(the freedom of assembly and the freedom of association or expression) and an agreement increased the number of ECK commissioners to 22.⁷ Justice R. Chesoni, whose integrity had been questioned on several occasions and who had been replaced by S. Kivuitu as Commission chairman, was appointed Chief Justice. This spoke volumes of the government's willingness to reform the judiciary.⁸ Furthermore, the IPPG agreement stipulated that half of the ECK commissioners would be nominated by the opposition, even though they would still be appointed by the President.⁹ M. Kibaki played an important role then in putting pressure on D. arap Moi. His party, the Democratic Party (DP), also proposed names of three commissioners among the ten new faces nominated by the opposition.¹⁰ Thus, the composition of the ECK ahead of the 2002 elections was no reason for major concern. D. arap Moi made seven new appointments to replace commissioners whose term had expired and renewed the terms of the rest of the commissioners, particularly the ten who had been nominated by the opposition in 1997. Similarly, the Commission Chairman and the Vice-Chairman were retained in their positions. However, the integrity of some of the commissioners remained in doubt, especially after a delegation led by S. Kivuitu paid a courtesy visit to State House in

⁷ It is also in 1997 that the *Constitution of Kenya (Amendment) Act No. 9* extended the powers of the ECK to make it better equipped to "guarantee free and fair elections" and to "promote voter education throughout the country."

⁸ R. Chesoni did not hold the Chief Justice position for long as he died suddenly in September 1999. He was then replaced by Bernard Chunga. R. Chesoni was seen to be fighting corruption when he set up a committee in 1998 led by Justice Richard Kwach to prepare a report on the challenges facing the administration of justice. R. Chesoni himself was, however, suspected of abuse of office, having been accused of receiving money illegally to rule in favour of several businessmen involved in the Goldenberg corruption scandal...

⁹ According to the IPPG agreement, the government and the opposition were to nominate an equal number of commissioners to ECK (10 apiece) to guarantee free and fair elections.

¹⁰ They were John Habel Nyamu, William Mbayi and Kihara Muttu. Out of the other 10 commissioners nominated by the opposition, three came from Ford-Kenya, two from Ford-Asili, one from the Kenya Social Congress and one from the Social Democratic Party.

February 2002 to meet President Moi. Since the group only comprised commissioners appointed by KANU, other ECK commissioners as well as members of the opposition saw it as a political visit ahead of elections. However, the doubts faded away after M. Kibaki's victory.

In 2007, the term of office of 22 ECK commissioners expired before the election date and one of the issues that arose was whether M. Kibaki would renew their terms to ensure preparations for elections and the voting exercise were handled by experienced people. Many of those who had assumed new commissioners would be appointed expressed concern over whether the IPPG arrangements would be respected. However, on 12th January, despite mounting pressure from members of the Orange Democratic Movement (ODM) for the letter and spirit of the agreement to be respected, Mwai Kibaki drew battle lines by unilaterally replacing commissioners with new appointees.¹¹ In October, with less than two months to the elections, the terms of more commissioners expired, and M. Kibaki replaced Gabriel Mukele as ECK Vice-Chairman on the 12th.¹² Still without consulting at all with the opposition, he went further to appoint five new commissioners on the 27th, and renewed the terms of two others.¹³ The only concession he made was to re-appoint S. Kivuitu chairman of the Commission on 2nd December.¹⁴ Indeed, the ODM led by R. Odinga had intensified pressure, saying that free and fair elections would only be guaranteed by retaining S. Kivuitu as the ECK chairman. The majority of the

¹¹ The President appointed Abdi M. Ibrahim, Anne Mwikali Muasya, Felista Naetu Ole Churie, Joseph Hamisi Dena, Joseph Kipruto Sitonik, Luciano Riunga Raiji, Mildred Apiyo Owuor, Muturi Kigano and Samuel Arap Ng'eny new ECK commissioners.

¹² He appointed a woman, Pamela Tutui, to replace Mukele.

¹³ The new commissioners were Samuel Nyanchama Mugo, Shem Sanya Balongo, Rachel Wanjala Kileta, David Alfred Njeru Ndambiri and Daniel Waisiko Wambura. Jack Tumwa and Kihara Muttu had their terms renewed, with the latter becoming the new ECK Vice-Chairman.

¹⁴ S. Kivuitu and G. Mukele were nominated to the ECK in 1992. Their term in office as commissioners were renewed in 1997 and S. Kivuitu was then made the Commission Chairman. The term in office was renewed by D. arap Moi before the 2002 elections.

commissioners were by all standards inexperienced, since only three of them (S. Kivuitu, K. Muttu and J. Tumwa) had presided over an election before.

Of particular concern was that whereas the commissioners appointed to preside over the 2007 election had all been appointed or reappointed by President Kibaki, the Commission could be suspected of working in his favour. Some of the appointments, considered as partisan, raised questions about the independence of several commissioners from the executive. For instance, K. Muttu was a former lawyer of the Kibaki family,¹⁵ while Muturi Kigano had been M. Kibaki's personal lawyer at one time and Pamela Mwikali Tutui was married to a PNU candidate for the Kajiado Central parliamentary seat. The renewal of K. Muttu's contract and his elevation to Vice-Chairman's position at a time when G. Mukele was being retired raised doubts over the criteria followed in renewing or not renewing some commissioners' terms of office. The letter and spirit of the IPPG agreement ahead of the 1997 elections had been to establish an electoral commission that would represent both the government and the opposition, in order to guarantee its independence and to give it more credibility. However, the IPPG was only an agreement in principle and the law was never amended to entrench its provisions. As a result, since the Constitution still made the appointment of ECK commissioners an exclusive prerogative of the President and there was no provision to seek legal redress if the letter and spirit of the agreement was not respected, M. Kibaki was free to choose to honour or not to honour it. This is why the manner in which ECK commissioners were appointed is considered one of the main explanations for its involvement in rigging.

¹⁵ K. Muttu, who comes from Nyeri, M. Kibaki's home district, had been nominated by DP under the IPPG agreement.

The commission's failure to guarantee free and fair elections

One of the less known functions of the Electoral Commission is the creation of new constituencies. However, such responsibility is first and foremost one of the powers of Parliament, "*all constituencies must be as equitable as possible in population, as far as deemed practical by the Commission*" (Article 42 of the Constitution). In 1963, 117 constituencies were instituted based on recommendations of the Kenya Constituencies Delimitation Commission chaired by S. Foster-Sutton. In 1966, 41 new ones were created before going up to 188 in 1986 and then finally increasing to the current total of 210 before the 1997 elections¹⁶. However, at least 12 of the last constituencies were created for political reasons—to increase KANU's chances in Parliament, without considering the principle of equal representation of all citizens and most notably, the ECK did not object.¹⁷ The law states that the number of constituencies should be reviewed every 10 years in view of population growth. That is why, in December 2007, the ECK proposed the creation of new constituencies, giving Parliament the justification that some constituencies that were heavily populated (Embakasi, Kasarani, Lang'ata)¹⁸ had the same number of representatives as others that were vast but were populated by less than 50,000 people, as it is the case in the north-eastern parts of the country.¹⁹ S. Kivuitu therefore suggested the creation 60 new constituencies. However, several parliamentarians objected to mandating the ECK to proceed, saying that the independence of the Commission was doubtful and expressed

¹⁶ F.A. Aywa and F. Grignon (2001).

¹⁷ *Ibid.*, pp. 116–7. These were Mwingi South, Kaiti, Kuresoi, Eldama Ravine, Gwasi, Uriri, Gatundu North, Mathioya, Khwisero, Sotik, Bura and Wajir North constituencies.

¹⁸ Embakasi, for instance, had 558,587 residents and 151,358 registered voters in the 2002 general elections while Lang'ata had 280,238 residents and 111,829 registered voters.

¹⁹ Turkana North constituency, which is one of the largest geographically, had only 33,000 registered voters in 2002. According to S. Kivuitu, it was to be split as its area made the work of a single parliamentarian difficult.

fears that they would be created in pro-Kibaki areas to enable his party to have more seats in parliament.²⁰

Nevertheless, the most important role of the ECK is to organize elections. During the elections that followed the first multi-party elections in 1992 and also in 1997, the institution was heavily criticized for its inability to prevent double voter registration or the transportation of voters across constituencies. In contrast, its work was praised in 2002. For example, in its report on the 2002 general elections, the European Union said that “*the ECK and its staff were well-equipped and in general appeared well formed*”²¹. For the first time, vote counting was conducted at every polling station rather than at the constituency level, as was the case before.²² This new arrangement clearly made the counting more transparent. Even though some cases of negligence were reported in the voter registration process, vote counting was considered well-organized and well conducted.²³ Following the 2002 elections, the International Commission of Jurists even presented S. Kivuitu with the jurist of the year award for his accomplishment in promoting democracy. The award was also meant to serve as an incentive to encourage him to continue with his role of guaranteeing fair and impartial elections. In the same way it was praised for overseeing successful transitional elections, the ECK was congratulated for the manner in which it presided over the November 2005 constitutional referendum. The two voting exercises also served as examples of speedy announcement of results that were announced less than 12 hours after the polling stations closed. Despite everything, the ECK still suffered from some limitations. During by-elections held in Marsabit, Moyale and Nakuru in 2007, it could not prevent the corrupt practices and the polls were not conducted in a

²⁰ *The Standard*, 29 May 2007.

²¹ Kenya General Elections, 27 December 2002. European Union Electoral Observation Mission, Final Report, p. 5.

²² The tallying then followed at the polling centre of every constituency.

²³ Kenya General Elections, 27 December 2002. European Union Electoral Observation Mission, Final Report, *op. cit.*, p. 33.

satisfactory manner, according to the Commission's own admission.²⁴ Thus, as the 2007 general elections approached, some questions lingered over its ability to guarantee a well-conducted vote.

In the period leading up to the 2007, the Commission certainly played its role rather well. As far as its responsibility to conduct voter registration and keeping of voter registers was concerned, the ECK already had a total of 12.5 million voters in its roll by end of 2006, and went on to organize several drives to register new voters up to October 2007. At the end of this exercise, it announced a total of 14.5 million registered voters, with a record number of new voters, particularly the youngest adults.²⁵ Nevertheless, the enthusiasm with which Kenyans registered to vote should not conceal the fact that some irregularities had been noted. For example, in the month of July, S. Kivuitu expressed concern that the number of voters in some districts was higher than the number of identity card holders, which led to suspicions that there were cases of "importation" of voters who had registered in certain areas whereas they lived elsewhere²⁶. A few months later, in October, S. Kivuitu announced that close to 400,000 voters had been registered twice.²⁷ Thus, the Commission Chairman was trying to ensure that it was more in charge of the registration exercise and was safe from any political manipulation. However, these revelations only served to create lingering doubts on the ability of the institution to guarantee proper elections.

During campaigns, the commission again tried to show its commitment by punishing several parliamentary candidates for

²⁴ Electoral Commission of Kenya's (ECK) National Conference on General Elections 2007 on 13-15th March 2007 at Kenya School of Monetary Studies, Nairobi, p. 4.

²⁵ *Daily Nation*, 25 October 2007.

²⁶ *Daily Nation*, 5 July 2007.

²⁷ *Daily Nation*, 5 July 2007.

incitement to violence.²⁸ Similarly, even with the multitude of political parties in the contest,²⁹ it successfully managed to print ballot papers (of course through a tender awarded to a company based in the United Kingdom) and to dispatch election materials to polling stations in different parts of the country, albeit with a few incidents.³⁰ On the voting day, several centres, particularly in Nairobi, Kisii and Narok opened late, but the ECK allowed voting to continue beyond the initially scheduled closing time to allow citizens to exercise their right to vote. There was also a mix-up of ballot papers involving various polling stations (ballot papers for Lenchami and Ilpolosat in the Kajiado North constituency were found in Changamwe, Coast Province). The problem was resolved, however, by airlifting the correct ballot papers, which occasioned just a slight delay in the opening of the affected polling stations. Finally, in Lang'ata, the Nairobi constituency where R. Odinga voted, the registers with names starting with letters 'A', 'O' or 'R' were missing on voting day. Luo names mostly start with an 'A' or an 'O'.³¹ But the ECK Chairman went to the affected area in person to resolve the problem and R. Odinga as well as the other people affected by the unfortunate event were able to fulfil their civic duty.

The ECK's image was therefore tarnished after the controversial declaration that M. Kibaki had been re-elected. This was due to confusion that surrounded the announcement and the cloud of doubt that hung over S. Kivuitu's power over the Commission and its members. Indeed, at one moment while the results were still being

²⁸ *Sunday Nation*, 23/12/2007. Aspirants Bonny Khalwale (Ikolomani MP) and Nderitu Gachagua (Mathira, in Central Province) were fined after two people were killed in election campaign violence in their constituencies.

²⁹ A total of 118 parties took part in the general elections in which nine candidates ran for president, 2548 aspirants for parliamentary seats and 15,332 others sought to capture civic seats.

³⁰ Two weeks to the elections, S. Kivuitu confirmed errors in the printing of ballot papers, with names of some candidates or the symbols of various political parties having been misprinted for 11 constituencies.

³¹ *Daily Nation*, 28 December 2007.

awaited, he had intimated that he could not reach some commissioners by telephone nor did he even know where several of them were.³² On 30th December, in particular, as S. Kivuitu announced the presidential poll results for some constituencies late in the afternoon, the results were contested by W. Ruto, an ODM agent, leading to protests at the Kenya International Conference Centre (KICC) hall, where announcements were being made. Members of the police force entered the room and evacuated S. Kivuitu, who a few hours later announced the re-election of M. Kibaki as president of Kenya in a room where only journalists of the national broadcaster KBC had been allowed. One hour later, the President was sworn at State House in by Chief Justice, Evan Gicheru. The ECK lost all credibility and has been accused of supporting the Kibaki side by approving fraudulent results. In this case it was even more criticized because there is a whole body of rules to guarantee transparent counting and tallying of votes.

On the ground, a Commission officer is in charge of filling Form 16 (results certificate for the presidential poll, indicating the total number of votes garnered by every candidate), 16A (on the declared results of the parliamentary poll and the presidential poll by constituency) and Form 17A (on the results of parliamentary and presidential polls by constituency), which by obligation must be signed by the officer and the various political party agents. Furthermore, agents, the media and international observers can obtain and keep copies of these documents, which are then sent to the ECK headquarters in Nairobi. Upon reception, any candidate can ask the electoral commission for a re-count or a re-tallying—a request that cannot be turned down. Therefore, when S. Kivuitu announced M. Kibaki's victory, even as ODM members requested for a recount in some constituencies, he did not observe electoral law. The credibility of the ECK was further tarnished, after M. Kibaki's contested re-election, when four

³² *Daily Nation*, 11 January 2008.

commissioners (J. Tumwa, Daniel Ndambiri, Samuel arap Ng'eny and Jeremiah Matagaro) said they had serious doubts about the tallying of votes.³³ In conclusion, the ECK proved completely incapable of ensuring the results of the presidential poll were authentic after three days had gone by following the end of the voting exercise and the declaration of the new President. Doubts persist over validity of the results announced by the commission. The accusing finger may have been pointed at the ECK as the institution responsible of the chaos that followed M. Kibaki's re-election,³⁴ but the crisis also highlighted the diminished credibility of the judiciary.

AN INDEPENDENT JUDICIARY IN THEORY

After the swearing-in of a president, the law stipulates that decision to hold a fresh election can only emanate from a High Court ruling. Nevertheless, R. Odinga, who contested the legitimacy of M. Kibaki's election, refused to file any petition in court, questioning the little of independence of the judicial system. From that point of view, S. Kivuitu's confession that: "*I arrived later at State House to deliver the certificate and found the Chief Justice there, ready to swear in Kibaki*"³⁵, (which implied that the Chief Justice ready swear in M. Kibaki even before the official announcement of his re-election), also raises a lot of questions on the autonomy of this arm of government³⁶.

In legal and neutral principle, proceedings before the courts are also political insofar as judges make their decisions within a specific

³³ *The Standard*, 1 January 2008.

³⁴ *Saturday Nation*, 5 January 2008.

³⁵ *The Standard*, 2 January 2008.

³⁶ Evan Gicheru indeed gave the impression that he lacked impartiality, particularly by rushing to swear in M. Kibaki the same evening that the results were announced and before an audience limited to the pro-government circle.

political context. However, the judiciary in Kenya has always faced accusations of being close to the executive power and being extremely corrupt.³⁷ After the 2002 transition, one of the stated objectives of the Kibaki government had been to put an end to the judicial system's bad image, which it considered as an obstacle to its efficiency. As testimony to his determination, M. Kibaki begun by replacing Chief Justice Bernard Chunga, who was accused of abuse of office, by Evan Gicheru. Furthermore, the Government appointed a Committee on Integrity and Fight against Corruption within the Judiciary in Kenya. The commission was charged with preparing a report on the state of corruption within the Judiciary. According to the document prepared by the commission, known as the Ringera Report³⁸, corruption affected 56% of judges of the Court of Appeal, 50% of High Court judges and 32% of magistrates.³⁹ It particularly questioned the integrity of five of nine appellate judges, 18 out of 36 High Court judges, 82 magistrates out of a total of 254 as well as 43 other civil servants in judiciary. President Kibaki proceeded to name two tribunals whose mission would be to inquire into these allegations. A number of people whose integrity had been questioned chose to retire or resign, but a non negligible proportion decided to respond and raised legal issues against these accusations. Among the cases that eventually came before the two tribunals, only one was concluded with the acquittal of Justice Waki in late 2004.

In spite of the "purge", the independence of the judiciary from the executive appears even more theoretical than real and, in spite of his stated will to change this state of affairs, M. Kibaki has been suspected

³⁷ On the organization of the judiciary: Y.P. Ghai, J.P.W.B. Mc Auslan (1970). On corruption within the judicial administration, refer to various reports by the International Commission of Jurists, in particular: B. Sihanya and P. Kichana (2004).

³⁸ The committee was led by High Court judge, Aaron Ringera.

³⁹ *Report of the Integrity and Anti-Corruption Committee of the Judiciary of Kenya, Vol. I (The Ringera Report)*, September 2003, p. 30-31.

of partisan appointment of new judges. In 2003 and 2004, the President proceeded to appoint 28 new judges of the High Court in replacement of the accused members of the bench. However, a number of issues have been raised over the criteria of appointment, which are suspected to be more based on political, sectarian and even tribal considerations rather than merit. These appointments have been cited by some critics as proof that “*the judiciary has been ethnicized*”. The critics argue that a majority of the new judges are Kikuyu, M. Kibaki’s ethnic community.⁴⁰ Furthermore, rather than enhance independence of the judiciary, the anti-corruption operations and the new appointments once again brought to light the control the executive wields over the judiciary and gave currency to the impression that High Court judges are very often “thanked” for favours to the system.⁴¹ This lack of independence proved to be blatant in February 2007, after the annulment of the appointment of three High Court judges. In theory, the recruitment and promotion of members of the bench is the responsibility of the Judicial Service Commission (JSC), which makes recommendations to the President.⁴² But after these judges were recruited, influential personalities in the Kibaki administration are said to have pressed for the annulment of their appointment, arguing that the decision to appoint them was made without consultations within political and

⁴⁰ The first wave of appointments in 2003 brought on board 16 High Court judges from the Kikuyu ethnic group, from the Mount Kenya region, whereas before the “clean-up” of the judicial administration, the High Court only had three judges from this community. International Commission of Jurists (ICJ), *Kenya: Judicial Independence, Corruption and Reform*, Geneva, 2005, p. 2–30.

⁴¹ Robert F. Kennedy Memorial Center for Human Rights (1992).

⁴² Articles 68 and 69 of the Constitution spell out the status and powers of the JSC. It has five members, who include the Chief Justice and the Attorney General, and it is responsible for appointing and maintain discipline among members of the judiciary. In reality, it proposes names to the President who then appoints the judges.

government circles.⁴³ This case showed that the Government was keen to throw its weight on matters affecting the judiciary and the JSC, and thereby reopened the issue of judicial independence. The separation of powers appears to be more than limited insofar as the President exercises control over the judiciary through powers to appoint and dismiss the Attorney-General and the Chief Justice. This explains why ODM has consistently stated its reluctance to seek legal redress, arguing that the judiciary is in the hands of the PNU and going as far as saying that M. Kibaki's appointment of High Court and Appellate Court judges shortly before the vote aimed to counter the possibility of a petition to contest the results.

Besides, even though in electoral matters any voter, candidate or the General Attorney can file a petition to the High Court to contest the result of a vote, the delays in determining the petition are extremely long owing to the backlog in courts and also because the set period for hearing and determining suits is unlimited.⁴⁴ In addition, parliamentarians often take advantage of the shortcomings within the system to delay rulings since legal loopholes allow them to obtain dismissal of cases against them. From a more concrete point of view and as an example, after the general elections 2002, more than 20 petitions were filed, five of which had not been determined by 2007 and one of which only led to a ruling to hold a fresh election... that was held in May 2007 just as campaigns for fresh general elections were

⁴³ The matter led to a very strange situation in that following their appointment, the judges were photographed in their official attire leaving the High Court in the company of the Chief Justice. Then they went to State House, where they were to be sworn in by the President, but they waited for over two hours only for the ceremony to be eventually cancelled. *Daily Nation*, 9 February 2007.

⁴⁴ According to Article 19 of the National Assembly and Presidential Elections Act (Chapter 7 of the Laws of Kenya), for all elections, petitions should be filed within 28 days after the publication of the results in the Kenya Gazette and will be determined by an election bench of 3 judges. The bench's decision can be contested in the Court of Appeal.

picking up.⁴⁵ In February 2003, Julius Daraka Mbuzi filed a petition against the December 2002 election of Harrison Garama Kombe, MP Magarini (in Coast Province), on the grounds that ballot papers used in the voting process were at the time of the vote defective and that various cases of fraud had been committed on the voting day.⁴⁶ The High Court judge in Mombasa, J. Khaminwa, annulled the result of the election then, but her ruling was followed by two appeals, one by Harrison Kombe and the other by the ECK. In March 2006, the Court of Appeal in Nairobi dismissed the appeals in two different rulings and a fresh election was held in May 2007 only seven months to fresh general elections.⁴⁷ The result was the re-election of H. Kombe.

In the specific case of presidential polls, there are precedents that leave a lot to be desired as far as efficiency in the courts is concerned. In 1992, Kenneth Matiba disputed D. arap Moi's election in the first multi-party election⁴⁸ on grounds of fraudulent results, as well as violence and intimidation by KANU. However, due to a flimsy technical "error"—the petition was not signed by K. Matiba himself but by his wife, the case was dismissed. Several parliamentary election results were also contested but most of the petitions were never determined.⁴⁹ In an irony of history, Mr. Kibaki also contested D. arap Moi's re-election in 1997.⁵⁰ The High Court also dismissed this petition on technical grounds that D. arap Moi had not been duly served with the court

⁴⁵ Following of the December 2002 general elections, 25 petitions were filed. 12 of these were dismissed while 10 were never determined.

⁴⁶ *Election Petition No. 1 of 2003*, High Court in Mombasa.

⁴⁷ During the 27 December 2007, H. Kombe lost his seat to ODM candidate Amason Kingi.

⁴⁸ The result of the 1992 presidential election was contested through six petitions filed in the High Court. Two of these were filed by K. Matiba, one by Gibotu Imanyara (FORD-K), one by James Orenge (FORD-K), one by two voters represented by a lawyer and one by John Harun Mwau. All were dismissed on technical grounds.

⁴⁹ Refer to: D. Throup and C. Hornsby, *op. cit.*, pp. 556–560.

⁵⁰ In 1997, M. Kibaki came second after garnering 31% of the vote. On 22 January 1998, he filed a petition in the High Court (*Election Petition No. 1 of 1998*) to contest the validity of the D. arap Moi's reelection as president.

summons in person. Given such precedents, it seemed understandable that R. Odinga rejected the court option, especially because the ODM had won the majority in Parliament and President Kibaki found himself in an unprecedented position. The election of M. Kibaki, who found himself up against a majority of opposition MPs in parliament, revealed the shortcomings of the Kenyan political model.

DISCREDITED POLITICAL MODEL DESPITE ELECTION OF A NEW PARLIAMENT

The controversy surrounding the announcement of the presidential poll results obscured the outcome of the parliamentary vote, which largely indicated the replacement of MPs with new ones and a situation where the President did not have a favourable majority behind him for the first time in Kenya. Out of a total of 210 elected, the ODM, led by R. Odinga, won 99 seats whereas the PNU, led by M. Kibaki, only got 43 seats.⁵¹ Furthermore, the parliamentary elections resulted in the fall of a big number of political veterans and M. Kibaki allies, thereby demonstrating their aspirations for change.

Following the vote, only 80 MPs were re-elected. As a result, the 10th Parliament has 130 new faces of which women are a sizeable number.⁵² The 2007 parliamentary poll results are significant in two ways. It reflects a rejection of Moi's old guard and the older generation⁵³, and secondly, it reflects a "class struggle" which manifests itself in the wave of change and the rejection of most of Kibaki's former ministers.

⁵¹ In reality, when the seats won by the parties allied to the two grand coalitions were added up, ODM had 102 seats (2 NARC MPs and one UDM MP) and PNU had 75 (the 14 seats won by KANU and those won by the various other parties), and also had the support of the 16 ODM-K MPs.

⁵² 15 women were elected as opposed to only eight in 2002.

⁵³ Some among the "veterans" were, however, reelected: John Michuki (75), William ole Ntimama (76) and M. Kibaki himself (76).

First, it is certain that the 2007 elections was a litmus test for D. arap Moi's influence following the failure of his "Uhuru project" in 2002⁵⁴ and following the increased weakening of KANU, the party he had dominated during his 24 years as Kenya's head of state.⁵⁵ During the entire campaign period, D. arap Moi tried to influence the Rift Valley voters, exhorting the Kalenjin community to vote for M. Kibaki. However, right from the start he had to contend with a younger generation that had coalesced around William Ruto, who was intent on winning to his side voters who had not forgiven M. Kibaki for sacking many members of their community from plum government positions. Besides, the Kibaki government remained very unpopular in the region because it had carried out evictions in Narok, Chepyuk and Mt. Elgon areas, in particular, rendering numerous families homeless. A combination of these factors led to M. Kibaki's defeat in the Rift Valley despite D. arap Moi's support.⁵⁶ With a number of former high-ranking Kalenjin civil servants who had worked under his regime rebelling against Moi, the former President's influence seemed to be declining. The election results in the Rift Valley are thus rather paradoxical because several ODM candidates were influential officials in the KANU government: Henry Kosgey, William Ruto, Franklin Bett, Sally Kosgey (head of the Public Service under D. arap Moi), Kipkalya Kones (former minister) and Zakayo Cheruiyot (former Permanent Secretary in D. arap Moi's government). Furthermore, D. arap Moi's stranglehold on the region was no longer as firm as it was in the past. This was demonstrated by the defeat of his three sons: Gideon in Baringo Central, Jonathan in Eldama Ravine and Raymond in Rongai. Similarly, all his allies in the province lost their seats beginning with controversial Nicholas

⁵⁴ In 2002, D. arap Moi unilaterally hand-picked Uhuru Kenyatta as KANU's candidate in the presidential election.

⁵⁵ On KANU's decline: D. Anderson, (2003).

⁵⁶ *Sunday Nation*, 30/12/07 ; *Sunday Standard*, 30/12/07. The Rift Valley voted in favour of R. Odinga, who garnered 64.6% of the vote to beat Mwai Kibaki who garnered 33.5%. Similarly, ODM won 31 out of the region's 49 parliamentary seats

Biwott.⁵⁷ The former president's popularity is today limited to the Rift Valley political and economic elite, as well as to the Tugen community, a Kalenjin sub-group to which he belongs. In contrast, W. Ruto now appears to be the best placed to represent the region's leadership as he enjoys support from the youth and the poor as well as of the Nandi (to which he belongs) and the Kipsigis sub-groups.

The parliamentary elections were also a testimony of the will to punish the Kibaki Government because 22 ministers lost their seats. All M. Kibaki could do was note the defeat of his allies Simeon Nyachae, in the Kisii region, Raphael Tuju, in Nyanza Province, Musikari Kombo and Mukhisa Kituyi, in Western Province, Kipruto Kirwa, in the Rift Valley, Morris Dzoro and Suleiman Shakombo in the Coast Province. Some of them were even party leaders, like M. Kombo, Ford-Kenya chairman, S. Nyachae, Ford-People leader, and R. Tuju, NARC-Kenya leader.⁵⁸ Even in Central Province, the defeat of the "Mount Kenya Mafia" (some of M. Kibaki's allies), was a testimony of an anti- Government vote.⁵⁹ Considered as "hardliners" because of their approach to national policies, particularly on the issue of constitutional review, these close allies of M. Kibaki represented the most radical wing of the Government and they paid for the failures of the regime, especially in the fight against corruption. Many parliamentarians also paid the heavy price because

⁵⁷ N. Biwott was leading figure in the KANU government and Keiyo South MP since 1979. The self-styled "Total Man" was one of the most feared politicians in the Moi regime. He was sacked as minister and arrested under D. arap Moi's orders after he was identified as the key suspect in the assassination of Foreign Minister Robert Ouko in 1990, until the murder charges were finally withdrawn. His name has also been mentioned in most the scandals of D. arap Moi's 24 year regime, particularly the 1992 and 1997 ethnic clashes, though none of these allegations were ever proven. His name was also mentioned in the Goldenberg financial scandal.

⁵⁸ Paul Muite, Safina party leader, also failed to secure reelection.

⁵⁹ This group included several political figures from Central Province like Njenga Karume, Chris Murungaru, Martha Karua, Njeru Ndigwa, David Mwiraria, John Michuki, Amos Kimunya. A number of them lost their parliamentary seats, namely N. Karume (Kiambaa), N. Ndigwa (Manyatta), D. Mwiraria (North Imenti), while others managed to retain theirs: J. Michuki (Kangema), M. Karua (Gichugu), K. Murungi (South Imenti).

they had changed their political affiliation or because they had called for the “Yes” vote in the constitutional referendum, when the draft constitution had been rejected in their region. Moody Awori, outgoing vice-president, ostensibly lost his seat because he broke ranks with the LDP, the party that sponsored him to Parliament, to support the draft constitution, which was unpopular in his region.⁶⁰ Furthermore, in Western Province, one of whose constituencies he represented in Parliament, the elections marked a change of leadership following the defeat of M. Kombo, M. Awori and M. Kituyi,⁶¹ and ushered in new “heavy weights” in the region, Musalia Mudavadi (Sabatia) and Cyrus Jirongo (Lugari).⁶² This development was due to the fact that for the first time the region voted almost unanimously for ODM as opposed to 2002 when even though it had supported NARC, KANU retained a number of seats.⁶³ Therefore, the Kibaki camp’s strategy of promoting its candidate’s re-election by supporting Ford-K in Western⁶⁴, KANU in the Rift Valley and Ford-P in the Kisii region, failed to work.

Following these results and despite the overhaul of the political class, often in favour of newcomers, there were lingering uncertainties on the loyalty of a number of newcomers in ODM. These new faces could have been tempted to follow the example of political opportunism set by ODM-K and K. Musyoka, vice-president in the new Cabinet unveiled by M. Kibaki on 7 January 2008. Moreover, by-elections to fill vacancies occasioned by the murder of two ODM MPs, the

⁶⁰ Nevertheless, M. Awori was an old man. Born in 1927, he was 80 years old when the elections were held.

⁶¹ The same thing happened in the Kisii region where S. Nyachae, who had been in Parliament since 1992 and was the apparent local power broker, was defeated by a NARC candidate.

⁶² M. Mudavadi was elected on an ODM ticket while C. Jirongo won on a Kenya African Democratic Union ticket.

⁶³ In the parliamentary elections, ODM won 18 out of the region’s 24 seats while in the presidential poll R. Odinga won with 65.9 % of the vote against M. Kibaki’s 32.2%.

⁶⁴ Ford-K, which had 24 MPs in the 9th Parliament, only managed to retain eight in 2007.

election of Emuhaya MP Kenneth Marende as Speaker of the National Assembly and the cancellation of results in three constituencies could have tilted the numerical balance in Parliament.⁶⁵ Similarly, the leaning of members of the smaller parties that had won 35 parliamentary seats combined⁶⁶, could have changed the equation of numerical strength in Parliament, especially since the legal framework for the formation of coalitions and the change of political affiliation were not very strict. In theory, in the event that MPs changed parties after their election to Parliament, their seats would become vacant and by-elections would be held.⁶⁷ For example, in 1966, when several MPs left KANU to join Oginga Odinga's Kenya People's Union (KPU), by-elections were held in the affected constituencies. However, more recently, in order to deal with divisions with NARC that had brought him to power, M. Kibaki had appointed members of opposition to the Government of National

⁶⁵ On the night of 28 January 2008, ODM MP for Embakasi, Mellitus Mugabe Were was murdered, as well as another ODM MP, David Kimutai Too (Ainamoi constituency), a few days later on 31 January. At the same time, the seat retained by K. Marende on an ODM ticket fell vacant in accordance with the law, which states that the seat of an MP elected to become Speaker of the National Assembly becomes vacant. The loss of these three seats was significant as K. Marende had been elected Speaker with a difference of only four votes (105 compared to 101 garnered by Francis ole Kaparo, the PNU candidate). The three seats fell vacant after the annulment of results of Kilgoris, Wajir North and Kamukunji elections, the PNU camp could again have a majority if it managed to win back the six seats.

⁶⁶ Most MPs from the "fringe" parties—Kaddu, Pick, Chama Cha Uzalendo (CCU), People's Party Kenya of (PPK), Ford-Asili, National Labour Party, Sisi Kwa Sisi, Democratic Party of Kenya—supported one of the two candidates in the December election but they always considered themselves independent. On the other hand, the DP, Kenda, Ford-K, New Ford-K, Ford-P had conducted campaigns in support of Kibaki but the prospect of nominating their own candidates for the parliamentary and local elections had caused friction with PNU.

⁶⁷ Article 40 of the Constitution states that any MP who defects from the party that sponsored him/her to Parliament shall automatically lose his/her seat.

Unity (GNU)⁶⁸ and most MPs elected on the NARC ticket in 2002 changed their political affiliation without their seats being declared vacant.⁶⁹ Though this manoeuvre caused uproar, there was no legal nor constitutional provisions against it, especially since Article 16 of the Constitution provides that the President can appoint any Member of Parliament to the cabinet. However, faced with this controversy, Parliament had passed the Political Parties Bill and an amendment to the National Assembly and Presidential Election Act (Chapter 7 of the Laws of Kenya.)⁷⁰ Thus, Article 17 of the Act now provides that no parliamentarian elected on the ticket of a particular party can accept to be appointed to the Cabinet without the written consent of the leader of his/her party. In case of violation of this provision, the affected parliamentarian will be considered as having resigned from his/her party.⁷¹ In reality, the sanction was minimal since under the Ninth Parliament, the Speaker of the National Assembly, Francis ole Kaparo

⁶⁸ In his election, M. Kibaki was sponsored by NARC, a coalition of several political parties, which included the Liberal Democratic Party (LDP) led by R. Odinga. However, within the first three years of NARC government, tension developed between LDP and other members of the alliance. In 2005, during the constitutional referendum, the LDP broke ranks with the Government and called for the rejection of the draft Constitution. After the rejection of the draft Constitution, M. Kibaki sacked his entire cabinet except Vice-President M. Awori and Attorney General A. Wako, then reshuffled it two weeks later. He retained the same ministers except seven of them drawn from the ODM, including R. Odinga and K. Musyoka, who were replaced by pro-government MPs affiliated to NARC (notably Charity Ngilu and M. Kombo), as well as some KANU and Ford-People MPs.

⁶⁹ About three quarters of the 222 MPs of the ninth Parliament changed their political affiliation between 2002 and the end of 2006, *Sunday Nation*, 3 December 2006.

⁷⁰ After M. Kibaki appointed KANU members to join his Government, one of the party members, Justin Muturi sought to counter this move by introducing an amendment to the National Assembly and Presidential Elections Act, in order to stop any further appointments of opposition MPs to join the Government without the written approval of his/her party.

⁷¹ Paragraph 5 of Article 17 of the National Assembly and Presidential Elections Act stipulates that: "*No elected or nominated member of the National Assembly through or as a supporter of a political party (other than the party whose candidate has been elected President) shall be appointed a minister of the Government of Kenya in accordance with Article 16 of the Constitution without the consent of the party that sponsored him/her for election or nominated him/her to the National Assembly.*"

was quite flexible in his interpretation of the Constitution, ruling that only a written resignation indicated a change of party. This is why ODM candidate K. Marende's election as Speaker of the National Assembly in January 2008 could mark an important departure in this matter. The PNU Government would have needed a Speaker of such a conservative Parliament to interpret the law in its favour.⁷² That is the reason it would have wished to see Francis ole Kaparo re-elected. However, not only will Parliament be presided over by a member of the opposition for the first time in the history of Kenya, but the new Speaker said as soon as he took over the office that his priorities would be to see a new Constitution enacted and to promote a more modern and independent Parliament⁷³. However, the majority the ODM commands in Parliament was particularly instrumental in enabling it to make its weight felt even more in the negotiations led by Kofi Annan, which, after a difficult start, ended with an agreement. The agreement attempted to balance executive power, which had hitherto been characterized by enormous presidential powers, through amendments to the original Constitution adopted at independence.

In 1963, Kenya indeed opted for a classic parliamentary system, based on the British model, with a Prime minister and a bicameral Parliament. The Constitution did not provide for the position of President, and Jomo Kenyatta took the country's reigns of power as Premier Minister. However, in 1964, a constitutional amendment made Kenya a republic and vested the executive power in a President, who was head of state as well as head of government and commander-in-chief of the armed forces. At the same time, the Prime minister's

⁷² The role of the Speaker of the National Assembly is fundamental as he/she who decides which laws, issues and motions to be prioritized. He can also control the number of ex-officio members of the chamber.

⁷³ In the third round of the vote, he obtained 105 votes against 101 obtained by F. ole Kaparo, outgoing Speaker of the National Assembly. Farah Maalim, also an ODM candidate, was elected deputy Speaker.

position was suppressed, to make way for the vice-president's position.⁷⁴ In 1967, the Senate was dissolved, ushering in a mono-cameral system, and in 1968, a constitutional amendment introduced the election of the President by universal suffrage. Gradually, the President's powers extended to an extent that he appeared to have no competing centre of power⁷⁵, but the Kenyan presidential system did not become identical to American model in which the legislative and the executive are really independent. Thus, "*the originality of the Kenyan constitutional system is based on the fact that the presidential institution is built outside a legal mould that is fundamentally parliamentary*".⁷⁶ Besides, the Kenyan President enjoys a unique status: he/she represents the symbol of national unity, above political parties, but because he/she also has to be an MP, he/she is exposed to party game.⁷⁷ Similarly, the legitimacy he/she enjoys because of having been elected by universal suffrage, in theory, protects him/her from a censure motion. Indeed, Article 59 of the Constitution accords Parliament the power to pass a vote of no confidence in the Government by a simple majority. However, whereas the mechanism plays a normal role in a parliamentary system, in the Kenyan model, where the President is both head of state and head of government, the passing of such a motion would put into question the independence the President enjoys by virtue of his/her election through universal suffrage, and would amount to a "*legal coup d'état*".⁷⁸ Though

⁷⁴ The Vice-President has no real political responsibility, except in the event of a vacancy in the Presidency when he/she can become acting president.

⁷⁵ For example, Article 23 of the Constitution provides that all executive authority is vested in the President.

⁷⁶ D. Bourmaud (1988), p. 112.

⁷⁷ To be elected President, a candidate should not only win the presidential election, but should also be elected MP in his constituency. However, he remains an MP after his election as president, as opposed to the Speaker of the National Assembly, whose parliamentary seat falls vacant after his election to head the August House. During the 2007 general elections, M. Kibaki was sure of winning his seat in Othaya constituency in the heart of Kikuyu land but the situation was less sure for R. Odinga, parliamentary candidate for Lang'ata, a constituency in Nairobi whose population was less homogenous.

⁷⁸ D. Bourmaud, *op. cit.*, pp. 118–119.

this prospect has never materialized, the ODM could have attempted this option to overthrow M. Kibaki given its numerical superiority in the new Parliament. The signing of an agreement between the two protagonists ruled out this possibility and enabled the country to come out of the crisis. The new arrangement, apart from providing for the reintroduction of the Prime minister's position, that would be occupied by R. Odinga, and the sharing of the ministerial positions between PNU and ODM, it would also pave way for reforms, in the least a minimal Constitutional review.

Conclusion

Even though the agreement signed between the two opposing parties brought hope after the upsurge in violence that affected the country, there are still uncertainties on the future of Kenyan institutions. We do agree that the reintroduction of Prime Minister's position could limit the powers of the President in the current Constitution, but it will be necessary to clearly and precisely define the duties and responsibilities of the premier. Indeed, the agreement provides the Prime Minister with the "*authority to coordinate and to supervise the implementation of operations and business of the Government of Kenya*".⁷⁹ However, his future relationship with the President and the Vice-President are not very clear, while his place in the executive hierarchy is uncertain. Similarly, though the reconciliation between the two parties seemed to be the only possible way out of the crisis, Kenya today finds itself without a political party leading the official opposition in Parliament, which can also be a source of concern over checks and balances against excesses of the future Government. Finally, the consensus that the political class has now reached on the need for national reconciliation and on the necessity to safeguard the agreement through constitutional amendments must not make Kenyans forget that the crisis also brought

⁷⁹ *The Standard*, 28 February 2008.

into focus a number of other problems related to the fundamental issue of access to and distribution of national wealth, which the country should resolve or risk a repeat of the same events in future elections.

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THE ROLE OF RELIGIOUS INSTITUTIONS

*Hervé Maupéu**

“The Bible furnishes Kenya’s shared national language of politics as much as it feeds its several ethnic imaginations. If Micere Mugo’s mother sang for her ethnic folktales, the Bible is a national store house of folktales. They may be told in different vernaculars but they are still the same stories. And it shows in everyday Kenyan culture”

J. LONSDALE, ‘Religion and Politics in Kenya’, Cambridge, *The Henry Martyn Lectures* 2005.

Like elsewhere in Africa, the Kenyan clergy is intimately involved in politics. Nevertheless, clergymen hardly ever try to join politics. In the 2007 general elections, a popular leader of the Pentecostal movement, Bishop Pius Muiuru, head of the Maximum Miracle Ministries, ran in the presidential elections but did not attract a large following. In the legislative elections, only two religious leaders were elected: Margaret Wanjiru (Starehe MP), who leads the Jesus Is Alive Ministries (JIAM), a Pentecostal outfit based in Nairobi and Rev. Mutava Musyimi (Gachoka MP), who was the NCCK (National Council of Churches of Kenya) secretary-general. On the other hand, the two religious leaders who were members of the previous parliament, Bishop Stephen Ondiek (member of a neo-traditional church, Legio Maria) and Pastor Akaranga, lost their seats.

Leading political parties can nominate parliamentarians. Only the Orange Democratic Movement (ODM) nominated a religious leader, Sheikh Mohamed Dor (chairman of the Council of Imams

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and Preachers of Kenya), the first Imam to enter Parliament. The clergy is therefore not over-represented in politics. Their influence is elsewhere. This influence can be analysed by examining religious pluralism in Kenya. The relationship between politics and Islam in Kenya alongside the neo-traditional movements is conditioned by the consanguinity between Christianity and the colonial. This is followed by a post-colonial State, which gives rise to an ambiguity of intimacy, collaboration, competition and a contradictory vision of social organization between Christian and politicians. During the colonial era, the State systematically used Christian missions to penetrate communities and to legitimize itself. This relationship between politics and administration, on the one hand, and religion, on the other, was marked by frequent tension. However, the faithful have over the years seen proximity and complementary between the two. After independence, religious and State-controlled structures continued to work together in several projects on the ground. Moreover, they share the same development-oriented nation-building ideology through development. Thus, when the former Catholic bishop of Machakos, Bishop Kioko, died recently, journalists highlighted the fact that he was “*a churchman keen on development issues*”, who built a hospital and a leading secondary school in the area, not forgetting several projects run by the Diocesan Development Office. Statement after statement by politicians stressed the leadership role played by the late bishop in the diocese. In a country where religious metaphors deeply permeate common parlance¹, it is significant that they all used this term, which is linked to politics, rather than the term ‘shepherd’, which is more closely associated with religion.

The Christian clergy and politicians share common political ideologies and they also work together. However, this does not sufficiently explain the clergy’s involvement in national politics. From

¹ “The people’s bishop leaves a rich legacy”, *Daily Nation*, 5 March 2008.

John Lonsdale's point of view, this interest stems from theological reasons: "*Kenyan political theology, a local version (some would call it a local sub-version) of liberation theory, has created a cyclic tendency in the State cult.*"² This outstanding analyst of the Kenyan political culture is right in asserting that religious leaders have a fascination with the State. Indeed, leaders of Christian organizations are currently experiencing the negative effects of one of these cycles where the clergy has difficulty clearly positioning themselves in relation to political leaders and politicians in general. To analyse this dynamic, churches will be considered as actors involved in the political game. It does not mean they are political actors like others but they are elements of political competition where there are winners and losers, even though it is not always easy to distinguish the gains from the losses.

Since the return of multiparty politics, the 2007 General Elections are the only ones in which religious institutions have been most discreet or the least decisive about. Election after election, religious actors appear increasingly marginalized. It can be said that Kenyan politics is getting in step with its constitution, which envisages a structure of an officially secular State. But what would be the sense of divorcing religion from electoral practices? Does it mean politicians have distanced themselves from the religious elite or at least become independent? Are Kenyans now denying their clergy the political role that they have played over the years? Are religious institutions ready to return to Caesar what belongs to him?

Contrary to the improbable hypothesis of separating religion from politics, it is important to understand the development of the political role Churches played within the confusion the Kibaki regime put on religious actors' perception of Kenyan politics. Under President Moi's regime, political divisions were clear-cut. Moral authority was clearly held by the opposition and despite unacceptable practices most of the

² J. Lonsdale, 2005, p. 4.

clergy debated the modalities of negotiating with a legitimately-elected government with whom they had to work, regardless of disagreements. The Kibaki era blurred these boundaries.

Indeed, the 2002 political transition was achieved due to active support from the most influential churches. Once in power, the new ruling elite worked with the clergy. There was nothing surprising about that since a large part of public services, particularly education and health, were managed by religious organizations. This collaboration became more intimate than before because churches tended to initially legitimize the new government they had endorsed, and in which they had big hopes. However, the National Rainbow Coalition (NARC) split soon after winning elections. Even though churches did not intend to choose between the two camps, thereby losing touch with the majority, their stand was never clearly visible. Indeed, the main religious structures, which are the most involved in public services, continued to work with the ruling class and appeared to endorse the Kibaki camp. As the stakes increased and the polls approached (the 2005 referendum followed the 2007 general elections), this trend became more apparent. What needs to be established is whether this trend was deep-rooted or simply about comments on sensitive matters. Thus, in 2007, like in previous elections, churches seemed to have taken sides. Their rhetoric about neutrality and respect of human rights, at least at diocese level, was like grapevine leaves that cannot orient growth towards light.

After the 2007 elections, the Kibaki government and later the Odinga faction engaged in political activities that could hardly be considered Christian. But how could they criticize or denounce a group which they had previously supported? Was it even possible to say they were playing the referee or could be assumed to be neutral in negotiations aimed at resolving the crisis? It quickly became apparent that the clergy were not credible in the new role the incumbent sought to

have them play. And what influence could they exercise over politicians who seemed irresponsible? The churches therefore had to reinvent their political role, especially because the faithful had clear and real expectations. After the elections the number of churchgoers reduced even further. Thus, religious institutions currently find themselves at a crossroads, grappling with issues and difficulties not experienced by human rights NGOs. Indeed, like the clergy, members of the bar in these NGOs, who contributed to the 2002 victory, often find it difficult to denounce erstwhile friends. Moreover, some human rights organizations had difficulty avoiding radical ethnicity in politics.³ Throughout the 1990s, Kenya was apparently endowed with a strong civil society which offered a viable alternative agenda. Is this still the case at a time when this country is in dire need of a unifying factor, a social contract and respect for human rights?

The Kenyan national political ethos is, above all, Christian and the other religions are more often than not marginalized. However, the 2007 election campaigns were deeply marked by actions and themes of a neo-traditional movement, Mungiki. Following the elections, this sect became one of the big actors in violence. In fact, most analysts only see militias in Mungiki youth. However, by ignoring its religious nature, it would be difficult to understand Mungiki's demands and the extent of its actions. Islam is also a religion whose political influence becomes evident during elections. Indeed, for politicians out to woo majorities, Muslim populations become particularly important communities.

³ Thus, three months after the crisis began, reports by government structures and the Electoral Commission of Kenya (ECK) are yet to be released. However, change of heart by some intellectuals (notably Prof. Kibwana) during the Kibaki era raises suspicion among analysts.

MUSLIM POPULATION MOSTLY IN SUPPORT OF THE OPPOSITION

During elections, the 'useful' parts of Kenya (over 1300 metres above sea level) rediscovers its peripheries, areas that are often Muslim. The Coast, in particular, seems to be the province to woo by those with presidential ambitions.⁴ In fact, Muslim faithful have traditionally voted for the presidential candidate who went on to win the elections... except in 2007, if the official results are anything to go by.

Throughout the election campaigns, political leaders spent long periods of time in the big towns along the Coast. The two main coalitions, ODM and Party of National Unity (PNU), demonstrated their influence and support in the region by holding massive rallies. Nevertheless, it soon appeared that government forces had difficulty in convincing voters. In August 2007, President Kibaki set aside one week to traverse the whole region. But speeches by pro-government figures were either lukewarm or highly critical. Even ministers from the region publicly stated that voters needed strong signals to be convinced by the incumbent.⁵

The *watu wa pwani* (Coastal people) stopped supporting the government for two main reasons. The Mijikenda and other African communities blamed the government over its land policies. Their community land or their right to land had been increasingly violated by environmental legislation on forests. Land speculation and corruption in particular, deprived them of the most productive areas. Squatters on public land had for several generations been demanding title deeds or recognition of their occupation. During elections, all politicians made pledges and Kibaki did this in 2002. Not content with forgetting

⁴ In reality, Coast Province is a melting pot for various communities where Christianity and Islam are represented more or less equally. It is one of the regions with the highest number of Muslim voters.

⁵ 'Coast leaders draw up wish list for President,' *The Standard*, 14 August 2007.

their campaign pledges, those close to the head of state evicted people occupying several public parcels of land near Mombasa and Malindi and sub-divided them.

A second source of tension drove coastal residents to the opposition. Like other East African countries, Kenya adopted an anti-terrorist legislation linked to the post-September 11 attacks. Like elsewhere, this legislation enabled the police to justify practices that particularly violated human rights. Many youths belonging to Muslim organizations were arrested and handed over to American forces.⁶ Several suspects of Somali origin found themselves denouncing their Kenyan nationality. This miscarriage of justice involved scores of people but Muslims of Arabic or Somali origin felt directly targeted. In particular, these practices reactivated a two-fold feeling of citizenship. For a lot of Muslims, it was difficult to get identity cards or passports. And most coastal residents thought the state did not invest in their region to the level of their expectations. It is true that major infrastructure in the region (roads, water, and electricity) as well as public services (health, education, domestic waste management ...) were far from satisfactory.

Faced with these accumulated frustrations, the ruling class resorted to quick fix solutions. A commission was set up to study the implementation of the anti-terrorist law and to propose solutions that would ensure the Muslims do not feel discriminated against.⁷ *Idd Ul Fitr*, the day that marks the end of Ramadan, became the 13th holiday recognized by the Kenyan Government.⁸ To address issues of

⁶ Isaac Ongiri, "Muslim lobbies take issue with Michuki's deportation denial", *The Standard*, 24 October 2007 ; "Ex-terror suspect's case withdrawn", *The Daily Nation*, 27 October 2007 ; "Political Repercussions of Somali Conflict Spread to Kenya", www.jamestown.org ; "Scores arrested in terror Hunt", *The Daily Nation*, 15 December 2007.

⁷ Isaac Ongiri, 'Muslim lobbies take issue with Michuki's deportation denial', *The Standard*, 24 October 2007 ; "Muslim issues team picked", *Daily Nation*, 16 October 2007.

⁸ 'Kibaki gives Muslims holiday', *Daily Nation*, 6 November 2007.

Muslims living in Kibera, an area within Odinga's constituency, Kibaki officially declared Nubians one of the country's ethnic groups. All these announcements did not translate into a reversal of plummeting state popularity. The Kibaki government then resorted to denouncing an agreement (Memorandum of Understanding) the ODM signed with Namlef (the National Muslim Leaders Forum), saying it would divide the country along religious lines.⁹ This controversy mainly aimed to stimulate factionalism within the Muslim community, which has always had difficulty protecting its façade of unity. Even though the Muslims seem to vote as a relatively homogeneous bloc, they remain split sociologically between communities (Mijikenda, Bajuni, Somali, inside Muslims...), which are only partly homogenized by the Swahili culture. Representative Muslim organizations do not share the same views and the ruling class easily managed to mobilize them against each other.¹⁰

Controversy over the agreement between ODM and Muslim organizations also sought to draw churches into the debate to the government's advantage. Catholic and Anglican leadership particularly denounced the MoU. Nevertheless, the Anglican Church denied rumours linking it to the dissemination of copies of the MoU.¹¹ Many positions expressed by Christian institutions were perceived by many Muslim leaders to reiterate their position as second fiddle in the life of a country that considers itself first and foremost Christian.

The election results from the Coast were clear. Out of 21 seats, the PNU only won three compared to ODM's 12. The opposition convinced voters by pledging high-level decentralization (*majimbo*)

⁹ In 2002, NARC, led by M. Kibaki, signed a similar agreement with organizations representing Muslims. What was in the interest of the country in 2002 no longer seemed to be five years later.

¹⁰ It is an old dynamic. For further reading, refer to F. Constantin, 1997.

¹¹ These rumours were aimed at discrediting R. Odinga, who is Anglican. During election campaigns word went round that his church had excommunicated him and considered him apostate.

which bordered on federalism—R. Odinga managed to convince voters about his willingness to initiate a ‘Marshall Plan’ to correct economic retardation in the Coast—through the establishment of a free trade area in the port of Mombasa. On the other hand, the Shirikisho Party of Kenya, which represented political interests of the Mijikenda, remained in the government coalition for too long. One month before the elections, some of its leaders said the party had withdrawn from the PNU, the coalition under whose banner Kibaki was seeking re-election. But their move came too late. Voters no longer wanted to be associated to the establishment. Shirikisho did not win any parliamentary seat, thus signing its death warrant, according to some analysts.

In North-Eastern Province, the PNU Waterloo was less clear than it appeared. Out of 10 seats, ODM won five. The Kenya African National Union (KANU) demonstrated its influence in this region by retaining four parliamentary seats. President Moi’s networks were still at work and the fortunes of the Kenyatta family, which controlled the party, presumably enhanced this fidelity. The tenth constituency was taken by Abdikadir Hussein Mohamed, who ran on a Safina ticket. Half of the region’s parliamentarians are therefore close to the Kikuyu leaders’ spheres of influence though they do not necessarily belong to M. Kibaki’s PNU.

Shortly after the election results were announced, there was tension in Mombasa. Like other towns that largely voted for the opposition, groups of youths, Luo against Kikuyu, clashed. These clashes led to only a few deaths and the police were not as viciously aggressive as they were in Kisumu. Moreover, Muslim organizations mobilized to calm down groups that were likely to engage in clashes. However, the situation remained particularly tense by the end of February 2008.¹²

Election campaigns were largely peaceful, except in urban areas.

¹² International Crisis Group, *Kenya in Crisis*, ICG Africa Report N°137, 21 February 2008, p. 10.

In the rest of the country, many tension zones emerged in the very places where ethnic cleansing had been experienced during the 1992 and 1997 elections. Analysts expressed fears of a repeat of the Likoni massacres, which had led to a bloodbath in the south of Mombasa in 1992 and, especially in 1997. ICG analysts expressed the view that the memory of police repression had left Digo leaders too permanently paralyzed to entertain any thoughts of violence. IRIN journalists¹³ viewed it differently. They particularly alluded to what they called the 'Mulungunipa Forest Group'¹⁴, a militia group linked to a minister, which the police came across undergoing training (in June 2007). Apparently, the political leader IRIN mentioned was the former Likoni MP and minister of national heritage during M. Kibaki's first term in office, Rashid Suleiman Shakombo. His name had often been mentioned in the commission of inquiry set up to investigate the Likoni massacres (refer to the Akiwumi Report). In 2007, he was not re-elected and he accused his opponents of having bewitched¹⁵ him. Some think that despite his age (over 75), he had not given up his political ambitions. Moreover, leaders who are keen to mobilize violence can comfortably pay former soldiers in such a region where arms smuggling is rampant, particularly from Somalia. On the other hand, the use of neo-traditional symbols and rituals, like in 1997, was more difficult since the infamous religious leaders, who had endorsed violence, were dead.

Finally, Muslim organizations came out of the post-2007 elections crisis relatively more strengthened in their political role. They demonstrated their capacity to influence the vote of their faithful. They controlled groups of youth which were ever ready to fight for a variety of causes. Thus, the streets of Mombasa did not experience

¹³ Integrated Regional Information Networks (IRIN), 'Kenya: Armed and dangerous', 22 February 2008.

¹⁴ Which is also mentioned in the ICG report.

¹⁵ 'Minister blames loss on witchcraft', KTN report broadcast by YouTube.

the kind of violence linked with the emergence of the Islamic Party of Kenya¹⁶ in the 1990s. Muslim leaders managed to control their flock. On the other hand, the political direction taken by churches seemed to be headed for troubled waters.

POLITICALLY DISORIENTED CHURCHES

During election campaigns, churches seemed particularly partial and did not behave like referees during the crisis. The prelates seemed too close to the political elite and not powerful enough to influence them. Thus, Christian organizations proved to be secondary actors in the political conflict. However, faced with the disaster, they did not bring themselves into disrepute like had happened in Rwanda. During the ethnic cleansing in the 1990s, they received internally displaced persons while the State appeared unable to act.¹⁷ The churches did not stop working with and within communities. Their political messages, at least at the national level, did not always seem discernible but they never lost contact with the people, nor did they lose confidence, which cannot be said of State leadership.

The Catholic Church was certainly the biggest loser in the political reconstitution. Close to a quarter of the Kenyan populace is Catholic, making the church the largest religious organization in the country. Since independence, it benefited from colonial land allocation to missions, which were not expected to compete but to homogeneously spread Western civilization throughout Kenya. In the 1960s and 1970s, the Catholic Church developed structures in many regions where it had been present. But for a long time it maintained the image

¹⁶ Refer to A. Oded, 2000.

¹⁷ Even though the administration was more present on the ground than in the 1990s, under the Moi era, the State covered up displacement of people. The media are now more present and the international community continues to follow the situation.

of an organization that had been barely localized. This reputation was evident in the nationality of its missionaries (mostly Italian, Irish and American) during the colonial era and the large number of white priests working in the country after independence. So, until the 1980s, Catholics remained discreet over national debates. The church's political behaviour changed with the return of multiparty politics. Together with mainstream Protestant churches, it agitated for the multiparty system. Its politicization radicalized with the first ethnic cleansing between 1992 and 1993. In fact, Catholic parishes played a major role in receiving tens of thousands of internally displaced persons whose existence the State was trying to deny. The top echelons of the church was at the time very open to the theology of liberation and its major official statements on the political situation were written by Father Mejia, a Colombian Jesuit who became the regional head for East Africa towards the end of the 1990s. The prelate was at the time living within a community in the Kangemi area (Nairobi) where he noted first hand the degeneration of public services in Nairobi slums. As the regime became more and more authoritarian, public services disappeared in most parts of the city and State presence shrunk in governance functions under the pressure of structural adjustment programs.

Throughout the 1990s, the Catholic Church leadership supported various initiatives to demand constitutional reforms. This was clearly in support of a democratic opposition, committed to defending human rights¹⁸ and which offered an alternative to the Moi regime. However, from 1992, Kibaki, a Catholic, seemed to be their favourite candidate. Its moderate and conservative stance were perceived as guarantees against excesses feared to be the hallmark of a ruling class that had difficulties in converting to democratic values. The top clergy knew the political elite very well and harboured distrust for its motivation and capacity. It therefore advocated for reduced powers of a Government that was increasingly absent.

¹⁸ Refer to H. Maupeu, 2004.

Support for Kibaki from the Catholic leadership was nationwide. But today, this support is limited and conditional and is perceived to come from an ethnicized or even Kikuyu organization. However, the Catholic Church's political influence stems from its national reach. Apart from the Anglican Church, the Catholic Church is the only other religious organization with a presence throughout the country. However, the Anglican Church of Kenya operates more like a federation of dioceses that correspond closely to ethnic groups, which they have sometimes contributed to inventing, while the Catholic Church is a centralized bureaucracy. The Catholic Church is a structure of 24 dioceses distributed within four provinces: Nairobi (2,669,000 members), Kisumu (2,582,000), Nyeri (2,446,000) and Mombasa (225,000). Most priests work in the parishes often situated in different dioceses or regions.

Why did the Catholic Church appear particularly partial and specifically support the president after the 2007 elections despite the contested election results? This perception is less linked to its position in 2008 than to a dynamic that has been in place for a longer time. First, the 2002 political victory was felt to be closely associated with the Kikuyu clergy. In Central Province, the primary elections to nominate NARC candidates were held in parishes and were presided over by priests. It is true that the Catholic Church was the largest religious force in the region: in Nyeri District 41.21% of the population is Catholic.¹⁹ Like in 1997, the clergy endorsed M. Kibaki and members of his coalition. In no other region did the Catholic Church appear as involved in election campaigns. This commitment was not only related to the fact that M. Kibaki was an eminent representative of Nyeri and that many politicians from the region were Catholics. The clergy were also very involved in contemporary debates about Kikuyu

¹⁹ Official church statistics. Nyeri Province covers the whole of Mount Kenya region and beyond. Its 7 dioceses are Nyeri, Embu, Maralal, Marsabit, Meru, Murang'a, Nyahururu.

ethnicity. Most publications in the Kikuyu language came from the Catholic printing press and the main intellectuals, thinkers on ethnic nationalism were Catholic. They were thus at the heart of reflections on what to expect of leaders. Their analyses were often critical but this did not stop them from actively supporting M. Kibaki. Local vicars were often vectors of rare social mobilization. This was the case in Thika at the beginning of the 1990s when slum residents demonstrated against pollution from industries and working conditions. Ten years later, a dispute involving coffee cooperatives received religious support. The Murang'a Catholic diocese newsletter, *Mwihoko*, was banned several times and reputed to be quite controversial both politically (during the Moi era) and socially (especially against multinationals). The clergy was therefore a very active socio-pluralist force and in local politics.

The Catholic Church was thus a champion of Kikuyu ethnicity and the clergy had an indisputable prescriptive power in Central Province. There is no such comparison in western Kenya, where Catholics represent less than a quarter of the population and are just one religious force among others. Their ties with the elite are a lot harder to pinpoint. Nevertheless, the church considers itself influential in the whole country and some prelates comment on important election campaign issues. Thus, Cardinal Njue, the Kenyan archbishop and former Nyeri bishop opposed the *majimbo* (decentralization) system, which was the cornerstone of the opposition's campaign agenda. The Catholic clergy from western Kenya, Odinga's stronghold, began to receive threats and announced that Cardinal Njue had expressed his own views and not the views of the church.

After the elections, the Catholic Church leadership held partisan positions. They called upon the two camps to talk and to share power. They supported all negotiations without trying to interfere. In the dioceses affected by violence, bishops courageously denounced those

involved. Like in the 1990s, Catholic parishes received a number of displaced families. Nevertheless, the image of the church deteriorated because it was no longer considered an entity above ethnicity that could speak in the interest of everyone. This partly explains why its messages were ignored. This is the point of view expressed by Musambayi Katumanga, a political scientist from the University of Nairobi, who explained in an interview with the *National Catholic Reporter* (25 January 2008) that “*the churches were silent when we really needed them. We are harsher with our church leaders because they are the ones who are supposed to stick their neck out one questions of justice and honesty. That is their mission, and they have failed us*”.

The Protestant churches came out of the crisis less weakened politically than the Catholics because the expectations on them were fewer. They disappointed many supporters but their self-criticism was harsher than that of the Catholics. During the election campaigns, leaders of churches created by colonial missionaries expressed themselves politically along ethnic lines even though national structures called for political neutrality and respect for democratic rules (rejection of vote-buying, rejection of election violence...). These religious organizations unanimously supported the PNU while the evangelical and Pentecostal churches supported the ODM camp. They sometimes aligned themselves with Musyoka, who often presented himself as ‘saved’. After the vote, churches avoided partisan rhetoric with the exception of some Methodist and Presbyterian leaders who endorsed the head of state’s re-election without consulting others. Members of the NCKK embarked on a repentance exercise (the ‘journey of repentance’ led by the organization Secretary-General, Rev. Peter Karanja).²⁰ They stressed that their credibility had been terribly soiled by the crisis Kenya experienced. True to staunch Protestant principles, they criticized themselves publicly while Catholics remained silent

²⁰ ‘Church on a soul-searching journey’, *The Standard*, 2 March, 2008.

on the topic, even though the blogs run by the clergy (particularly those hosted by expatriates) showed their concerns. The nature of the debate also differed between the two Christian denominations. Whereas Protestants speak of principles and morals, Catholics had a more technocratic approach: they sought bureaucratic solutions to avoid getting their structure entangled in partisan positions that could overwhelm them. Thus, some bloggers called for an end to dioceses based on ethnic boundaries. They called for an end to posting of bishops to minister among their own ethnic communities.²¹

Christian organizations were taken by surprise by the post-election crisis. Their response was to call for negotiations and to receive victims of massacres, mostly without discrimination. They also engaged in a reflection exercise on their role in breeding the causes of the disaster. Their part was actually quite minor. The conflict showed their helplessness and their inability to influence politics. It is likely that in the short-term their political voice will remain inaudible. This is not the case for Mungiki, contemporary Kenya's most infamous of the neo-traditional movements.

THE TOUGH POLITICIZATION OF MUNGIKI

In 2002, Makau Mutua, a Kenyan law professor in the State University of New York, dedicated two chapters (4 and 5) of his principal work²² to how differently the State and human rights organizations treat the Holy Book religions and the African traditional denominations. Both Christian and Muslim proselytism has demonized traditional religions

²¹ John L. Allen Jr, 'Church leaders faulted in Kenya', *National Catholic Reporter*, 25 January 2008; Catholic Information Service for Africa (Nairobi), 'Catholic expert says Church is guilty of fanning tribalism', <http://www.allAfrica.com>, 29 February 2008.

²² M. Mutua, 2002.

and imposed the idea that pre-colonial cultures were not well-adapted to modernity. Both the colonial and the post-colonial State had a hand in this marginalization of African cultures.

In many African countries, there have been no national debates to evaluate and contextualize African customs and laws within the modern state. Many traditional practices, from polygamy to traditional healing and worship, which were discredited by the colonial state, are actively prohibited and punished by the new African-led governments. In this process of continued acculturation, African religions have been one of the major casualties of the culture of imitation (Mutua, 2002: 105).

Mutua, the multicultural activist, defends the idea of “*moral equivalence of cultures*” that contemporary human rights must actively set in motion.

At no moment does M. Mutua allude to Mungiki. Yet Mungiki seems to be the main theme of his two chapters. Kenyan readers familiar with his works associate his thoughts with the risks presented by the sect, which M. Mutua knows very well. Indeed, he actively participated in the creation and the development of the Kenya Human Rights Commission, and was one of the rare breed of lawyers who, towards the end of the Moi era, dared to take on cases involving members of Mungiki, who faced persecution by the ruling class which alternated arrests of members with political manipulation of the sect. In the beginning of the new millennium, the KHRC no longer wanted to deal with cases of young supporters of this neo-prophetic group. Release Political Prisoners, a much politicized and ethnicized NGO (essentially a Kikuyu movement) took over. Members of the KHRC shunned the Mungiki cases because they were afraid of being used by a sect that took advantage of the courts to try to gain publicity for its activities. However, Makau Mutua seems to politically disagree

with this movement or at least he does not appreciate their political strategies. But Mungiki offered him a chance to reflect on the nature of the post-colonial State and the sense of crisis in this superstructure. According to him, "*the modern African State, right from its inception, has at best, relentlessly engaged in a campaign of marginalization, and at worst, eradicated African religion*" (p. 112). It has caused "*identity disorientation*" (p. 114), which explains in a deeper sense the post-colonial State's failure to adapt because it forgets or simply casts away its memory, and is set according to Eurocentric norms and values. Even though he refuses to talk of Mungiki, M. Mutua implicitly provides an analytical framework for the sect's political situation and the reactions it elicits. However, Mungiki was at the heart of the 2007 election campaigns (not only in Central Province) and occupied a very special position. Both the media and politicians spoke of violence and the movement's practices, without dealing with the sense or the political message conveyed by these actions. Sanctions against Mungiki obscured its politicization. The elites refused to accept Mungiki's presence in the public space and in the same vein denied the relevance of social issues that the sect dramatically raised. However, since the first post-electoral violence, the ruling class has again woken up to the social reality that Mungiki has been exposing to them and which they rejected. At certain times of the crisis, it became difficult to deny deep-rooted movements in society.

Mungiki has made headlines in newspapers for the last ten years or so and researchers in social studies have come up with many analyses on this movement. Two trends have followed each other. Towards the end of the 1990s, Mungiki captured the interest of specialists on religion.²³ Protestant organizations (NCKK) financed major research aimed at appreciating the extent of this phenomenon. After the wave of American-inspired Pentecostal movement, Protestant churches

²³ G.N. Wamue, 2001.

feared the success of neo-traditionalists. Thus, Mungiki captured their attention at a time when intense rumours circulated on devil worship entirely taking over social life in the Mount Kenya region. Devil worship was perceived as a contemporary form of ancient witchcraft from which many Kenyans, and in this case the Kikuyu, tried to protect themselves. In the face of this concern, mainstream Protestant churches felt disadvantaged and were incapable of finding practical answers when the Pentecostal movement and neo-traditionalists took full advantage of the faithful's fears. Thus, sociologists commissioned to study Mungiki took interest in the sect's background. They showed that it arose from the widespread wave of prophetism that tends to be on the rise whenever the Kikuyu community considers itself in serious crisis and that it expects explanations to what it is experiencing. They also underscored the Mau Mau heritage on which Mungiki blossomed. Indeed, the contemporary sect portrays itself as having direct links with the movement of the 1950s from which it has borrowed its objectives, methods and rituals.

Since 2000, this religious sociology approach gave way to a more minimalist vision which from a social science perspective, denies the media doxanalysis. The majority of politicians and mostly the Kenyan middle class are frightened by this violent order to supposedly return to its roots, which the movement is carrying out effectively.²⁴ Mungiki is therefore exclusively perceived as a federation of groups of bloodthirsty youth: *"Apart from running extortion rings largely targeting the matatu industry, the Mungiki kill in the most gruesome manner, usually by beheading their victims."*²⁵ These analysts portray Mungiki as a more successful militia than others. However, by only looking at this aspect of Mungiki activities, they cannot find any explanation for the movement's unique success. Obviously, it is difficult to

²⁴ D. Anderson 2002; P.M. Kagwanja, 2006; M. Katumanga, 2005; H. Maupeu, 2002a ; J.-C. Servant, 2005.

²⁵ 'Mungiki storm city, stage demo', 6 March 2008.

understand Mungiki without looking at the group in the context of a larger dynamic of privatization of violence, State withdrawal from a whole range of governance functions and take-over of security by communities themselves. Nevertheless, this movement is not only a militia group which extorts money wherever it operates. If Mungiki is simply a Mafia, why then did the ruling class engage in a vendetta war against the group in 2007?²⁶

Indeed, State leadership largely contributed to the focus of the 2007 election campaign on Mungiki. Their attempt to gag the sect politically failed and backfired on them. In the beginning of year, the family of the sect's founder announced that their organization would sponsor candidates in all Kikuyu constituencies. In 2002, Mungiki made similar statements. At the time, politicians had effectively contained politicization of the movement. Why did the ruling class opt to engage the Njenga family in an open war five years down the line? It probably stemmed from the contents of a press conference that the media paid little attention to. Maina Njenga, the son of the Mungiki leader, announced that he was interested in one of Laikipia's two constituencies, his family's home town. However, the Kikuyu population in Laikipia is mostly from Nyeri District and the town's economic and political elite consider this part of the Rift Valley as an annex of their region. Thus, Kibaki considers Laikipia as part of his Nyeri stronghold. It was significant that in 1997, when he challenged the election results, the ruling class at the time triggered off ethnic cleansing in these two constituencies. The message was understood and Kibaki withdrew his petition. In 2007, the election results seemed too close and the President wanted to secure all the Kikuyu constituencies. Consequently, Laikipia West was taken by Ndirithu Muriithi, the head of state's nephew and brother to Kibaki's main spin doctor in the

²⁶ This makes specialists to adopt a policist approach which is strongly balanced against religious sociology analysis: P.M. Kagwanja, 2003; H. Maupeu, 2002b; H. Maupeu, 2003. For more on the Mungiki doctrine, see H. Maupeu, 2007.

1992, 1997 and 2002 election campaigns. The Njenga family therefore presented a threat to the interests of Kibaki's immediate family. This challenge was even more intolerable because the new candidate was not a politician and therefore faced great odds in winning the election. The reaction was fast: Maina Njenga was arrested together with his cousin for being in possession of weapons and consuming drugs (hashish). The judges sentenced Njenga to five years in jail and released Joseph Kimani Ruo. Apparently, the police rearrested the former, which they denied. He has since been reported killed. This case triggered off response strategies by Mungiki, which staged targeted attacks in constituencies represented by M. Kibaki's close allies. They especially targeted politicians with whom they had worked and who would have betrayed them (at least this is the consideration of Mungiki leaders). Thus, they concentrated on ruining the reputation of the two ministers of internal security under Kibaki, C. Murungaru and especially John Michuki. To hit the latter, Mungiki's destabilization methods took various forms: murder of local administrators in the minister's constituency, financing an opponent, threatening the bus service controlled by the politician's son, destruction of coffee plantations and assaulting patrons of the country club he owns near Nairobi. But the Kikuyu elite showed some paranoia and all risks suffered by J. Michuki's businesses were probably blamed unfairly on Mungiki.

The sect did not concentrate its violence exclusively on political targets. During the second quarter of 2007, in particular, it carried out several murders in the outskirts of Nairobi (Kiambu, Banana Hill), apparently to frighten supporters who attempted to jump ship in the face of mounting police persecution. Indeed, a new squad called *Kwekwe* was set up to specifically fight against Mungiki. Enjoying absolute immunity, it engaged in massacres. Human rights organizations

estimate that close to 500 youths were killed between June and July.²⁷ During the entire summer, bodies were often recovered in the virtually-deserted precincts of the Nairobi National Park and in the rivers of Kamba districts. The security forces arrested very many lower-class ordinary Kenyans only because they were Kikuyu, poor and young. This was on the suspicion that they were possibly Mungiki adherents. The persecutions were particularly virulent in Michuki's constituency, where, for several weeks, young men opted to flee and seek shelter elsewhere in order to avoid police harassment.

Tension between Mungiki and the State leadership can be interpreted as a consequence of the wounded pride of senior authorities. Besides, this crisis, like the Mau Mau conflict, is some sort of civil war among the Kikuyu. In fact, sections of the Mount Kenya populations read the confrontation between Mungiki and the State as a continuity of the violence that pitted loyalists against the Mau Mau in the 1950s. Thus, J. Michuki managed with difficulty to clear himself of accusations over his loyalist past. M. Kibaki himself made a lot of effort not to be bundled together with loyalists. Since his ascent to power, he has honoured the memory of Mau Mau heroes. There was even a disastrous tour in 2003, when a pompous welcome was organized for an Ethiopian peasant presented as General Mathenge, who was said to have taken refuge in the neighbouring country. The results of DNA tests on the Ethiopian were released four years later.²⁸ The President also promised to find the bones of Dedan Kimathi, the most famous Mau Mau leader. This is another failure that the regime attempted to erase from people's memory by installing a bronze statue of the hero in central Nairobi.

These efforts were hardly convincing because the Kibaki government

²⁷ IRIN, 8 June 2007, 'Police repression against the Mungiki sect intensifies'; Oscar Foundation, *Youth State Repression. The Killings Fields*, Nairobi, 2007.

²⁸ 'Ethiopian Ayanu was not the Uhuru hero', *The Standard*, 18 October 2007.

had a policy that was radically hostile to Mau Mau ideals whereas Mungiki seemed to be a legacy (or offshoots) of the movement of the 1950s (even though former freedom fighters' associations contested this). Indeed, the sect, like the Mau Mau bush fighters, denounced all social obstacles that impeded achievement among young Kikuyu. However, the State is at the centre of an economic system in which the youth cannot obtain salaried employment, largely reserved for the older generation. Even young graduates have difficulty getting employed whereas there has been economic growth since 2003. They have gained nothing from an improved economic situation that has brought no hope to the most populous age groups in the country. They hence find themselves being approached for jobs as militias. It is the return of warrior ideals which makes violence the only hope of success for many young people. It creates conditions which are more prone to eruption of violence than factors of low life expectancy (at less than fifty years), which has considerably reduced the window of opportunity within which the youth can achieve (by starting a family based on sufficient income).

The State had no solution to this infernal equation (Malthusian economy + age groups before demographic transition + privatization of security), apart from the spectacle of widespread high-level corruption (Goldenberg scandal during the Moi era and the scandal of Anglo-Leasing companies during the Kibaki era), from which certain people benefit more than others. In this context, Christian morality and democratic values officially defended by all public personalities appear to be double-speak that gives little hope. The thought that the Mungiki message is yet to see better days is justifiable. The post-2007 crisis clearly demonstrated this.

Right from the initial violence that followed the announcement of official election results, Mungiki factions participated in ethnic

cleansing that affected some parts of the sprawling Mathare Valley slums. In towns situated in Kikuyuland and Kikuyu-dominated towns in the Rift Valley (Nakuru, Naivasha, Nyahururu), Mungiki cells were reactivated. They administered oaths more and more openly and the police were asked to turn a blind eye. During the month of January, the sect remained rather discreet and many journalists thought that the summer massacres had completely disorganized Mungiki. But the second wave of violence in the Rift Valley discredited this analysis. Both in Nakuru and Naivasha many gangs of youth, some proclaiming their membership to the sect, carried out massacres of non-Kikuyu residents. They terrorized passengers on all roads from Nairobi to western Kenya.

This second wave of murderous fever was linked to the risks of ODM–PNU negotiations. State leadership wished to procrastinate and prolong the discussions for as long as possible while Western powers resorted to pressure and threats to force negotiators to reach a compromise. Some quarters close to the leadership perhaps funded or at least capitalized on the violence, which erupted very conveniently, to push their strategy. But Mungiki took advantage of this respite or prompt cooperation. Thus, in early March, the movement, under the banner of Kenya National Youth Alliance organized a protest march in downtown Nairobi bringing together several thousands of people. The demonstrators demanded the release of their leader Maina Njenga with slogans like “*No Maina No Peace*”. The police allowed the demonstrations to continue but announced the following day that a new, specialized police force to fight Mungiki would be created. It would replace the *Kwekwe* squad that had been disbanded in January 2008.²⁹ The mission of this police force was difficult to define as the leadership still needed the services of Mungiki. But the sect was not

²⁹ ‘Mungiki storm city, stage demo’, *The Standard*, 6 March 2008; ‘New squad formed to crack down on Mungiki’, *The Standard*, 7 March 2008.

always going to allow itself to be used and to be denied space in public life.

The analysis of Mungiki's political behaviour during the election period tends to consider this group as a political actor like any other. Taking its religious dimension into account makes it possible to qualify the image that attempts have been made to improve. First, Mungiki participates from a largely religious perspective where this sphere is subtly separated from the political and socio-cultural space. In this sense, this group positions itself at the centre of continuous production of the Kikuyu identity, notably to the level of its political organization. Like other prophets, it must explain what is expected of leaders in order to arrive at a certain understanding of society. Besides, and this is its originality in the grey prophetic sphere. It also portrays itself as a participant of the group called upon to govern. Indeed, Mungiki, like other Kikuyu social groups, positioned itself to welcome the election as *Ituika*, the moment where in the pre-colonial Kikuyu society, the generation in power (political and religious) handed over to a younger generation.³⁰ In this view, generations of social cadets must demand the exit of social elders. In the end, the youth take over the community's leadership after a ceremony of purification, making a fresh start. Obviously Mungiki considers itself an embodiment of a fraction of the youth. As can be seen during elections, the period bears a strong meaning in the prophetic conception of the world that the sect promotes.

From the end of the 1990s, the Njenga family spread this doctrine of *Ituika* election that proves to be a rallying call among young adherents. But despite appearances that the sect founders cleverly protect, this vision is challenged by sections within it. Indeed, one of the reasons for the movement's success is due to its means of communication which is both modern and very controlled. Until 2002, Mungiki's external

³⁰ On this subject, refer to H. Maupeu, 2003 and 2007.

relations were managed by N. Waruinge, the founder's highly-educated cousin with an impressive network of acquaintances in the political arena and in the media. This expert in communication managed to entrench the idea that Mungiki is a united mass movement, and whose followers are organized in a firm hierarchy (with model that is almost military), with a strong mobilizing or even revolutionary capacity. This rhetoric hardly created any illusions and it transpired that some Mungiki groups enjoyed a high degree of autonomy. This led to a distinction of the upcountry Mungiki, who operated differently from the Mungiki in town. Ties and numerous occasions for rituals made them meet. Nevertheless, it was clear that Nairobi communities carried out their own (economic and political) activities and the interviews seemed to indicate that they were hardly accountable to anyone. Mungiki appeared like a federation of various groups, or like a trademark of an identity factory. However, during the elections, the Njenga family did not seem to stomach this situation any more and in 2007, sect members were murdered because they wished to leave the movement which was facing police persecution. These murders, whose aim was to instil more discipline in the ranks, were committed in accordance with rituals (severed heads displayed on a post facing a certain direction...). These killings were certainly necessary to ensure the fidelity to a religious movement which seemed to be fragmenting. Indeed, all research findings on Kikuyu prophetism underscored their difficulties to institutionalize and to limit continuous divisions.³¹ However, the contemporary Kikuyu prophetic field is currently dynamic and it readily offers alternatives to Mungiki's war and youth vision. Thus, the Akorino nebula proposes a

³¹ Refer to Valeer Neckebrouck's work, *Le onzième commandement : étiologie d'une église indépendante au pied du Mont Kenya* (Immensee : Nouvelle revue de science missionnaire, 1978) and *Le peuple affligé : les déterminants de la fissiparité dans un mouvement religieux au Kenya central* (Immensee : Nouvelle revue de science missionnaire, 1983).

pacifist, apolitical religious practice and away from a world³² that can act as refuge when Mungiki groups attempt to develop authoritarian oath-taking and conversion, which seems to be the case since January 2008. So much so that the recent Mungiki resurgence, which has apparently enjoyed high-level political patronage, was not unanimously embraced by sect elite itself. Ben Rawlence³³ thus thinks that the Njenga family was not directly involved in the post-election Mungiki reprisals. These forces were essentially manipulated by N. Waruinge. Thus, the sect found itself increasingly in the news but gradually lost its religious legitimacy. Mungiki became a label designed to instil fear but this political use of myth and symbols associated with the movement would neither dissipate Kikuyu prophetism nor political issues that this group so appropriately raised.

In the end, religious actors were only very secondary actors in the 2007 election campaigns and the crisis that followed the polls. This is probably regrettable because it reveals a political system that is closed by politicians, who lack new ideas and prevent the civil society (religious leaders) from genuinely engaging in the political processes. The political negation of Mungiki or at least the issues that the sect raises, reveal a system that ignores the majority of the people (the youth) and, in particular, the extremely poor sections of the population. It is dangerous when the society extols the virtues of wealth at the expense of principles of solidarity and social contract.

³² On this subject, Barbara Morovich is an authority. Refer especially to Morovitch, B., 2007. *The Tent of the Living God* is also an neo-traditional movement close to the Mungiki wave. Some even say that Mungiki stemmed from it. This group, which is pacifist, survived the death of its founder, Ngonya wa Gakonya and offers an alternative for Mungiki adherents.

³³ He prepared the Human Rights Watch report on the Kenyan crisis, *Ballots to Bullets. Organized Political Violence and Kenya's Crisis of Governance*, March 2008, Vol. 20, n°1 (A).

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THE HUMAN RIGHTS CIVIL SOCIETY:

Social powerlessness and the quest for political legitimacy

*Dominique Connan**

The 2007 General Elections in Kenya and the subsequent crisis badly damaged the country's international reputation, which had been economically flourishing, towards democratisation within a strong civil society. At a moment when the jolts from the political crisis have dissolved the myths and illusions from this exported image, it is important to reflect on one of its major bases: the Kenyan 'civil society' that is often described as a solid rampart against the demons of authoritarianism, violence and tribalism. A definition of this civil society is required as an initial step towards studying it. It has very blurred outlines, whose ambiguous term of 'civil society' bears whatever meaning the speaker wishes to give it.¹ It will be defined here as a collection of associated bodies that recognise the State as a monopoly of political power, while playing an influential and critical role towards it. It is within this framework that this definition stops at an Anglophone, secular human rights civil society in Kenya. Religious institutions, particularly churches, which play an important role within civil society, are not included in this definition.² What will be broached here is the issue of militia and of 'militarized' groups that can be termed

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¹ For a more complete history of this expression's various definitions, see F. Rangeon, 1986.

² See the article by Hervé Maupeu, 'The role of religious institutions', in this volume.

ethnic in terms of their relationship with the State, depending mainly on their areas of operation. The latter are often an ambiguous group that cannot easily be integrated within a reflection of 'civil society'. As armed organizations, the groups do not acknowledge the State as the monopoly for legitimate violence. This chapter will therefore limit itself to an evaluation of what influence the human rights civil society could have vis-à-vis these militia, who have often been the operators of post-electoral violence.

This arbitrary choice of only considering human rights organisations is justified by the facts: the flag bearer of first, multipartyism then secondly, of constitutional reform since the beginning of the 1990s, this sector of civil society and the individuals in it were singled out during the electoral process and political mediations which followed the electoral irregularities. In addition to the justification of these events, they were the only organisations that could be studied from journalistic sources.³ The intention here is not to draw up an exhaustive list of non-governmental organisations (NGOs) that played a role in the electoral process and its outcome. A modest attempt has been made to isolate the most outstanding examples, as well as various strategies unique to these actors in the context of the crisis that perturbed Kenya at the start of 2008. In order to understand the specific configuration of the 2007 General Elections and their challenges for civil society, a brief historical framework is required, bearing in mind that the civil society has barely found its place in the political chessboard since 2002. The chapter will pose some elements for reflection on the tactics aimed at making these organisations and individuals legitimate actors of the process to find a way out of the crisis. In conclusion, the paper broaches the issues that created this new configuration—the issues renewed as concerns the

³ Mainly *The Daily Nation* and *The Standard*.

civil society in politics, of its independence from leaders and parties, and *in fine*, of its representation.

CONSTITUTIONAL REFORM SINCE 1997, A VEHICLE FOR STRUCTURING THE CIVIL SOCIETY

What is referred to as the human rights civil society is a recent phenomenon in Kenya. Its emergence as an influential force dates back to the end of the 1990s. Since then, it has adopted an equivocal attitude towards the government in power. Making a plea for political openness in 1997, the civil society greatly contributed to the victory of Mwai Kibaki in the presidential elections of 2002. However, the hopes for change brought about by the new regime were soon disabused. The failure of the constitutional reform process is symbolic of this disappointment more so as it had been the society's battle horse since the end of the 1990s. Nevertheless, the 2005 referendum allowed the civil society to once again take up its official recognition, first as an electoral observation force. The 2007 elections allowed continuity for the process of recomposing the role of the associations for civil rights protection.

Constitution and eviction of a social front for a political opening (1994 – 1997)

From 1994, the Law Society of Kenya, the International Commission of Jurists (Kenyan Chapter) and the Kenya Human Rights Commission introduced a Constitution project within which they defended a pluralist and democratic system. Indeed, it was only then that Daniel arap Moi's regime agreed to repeal Section 2A of the Constitution which instituted

a single-party system, but this was merely a formality: the President still held considerable discretionary powers and a control of a repressive machine in terms of an authoritarian State. Although mainly emanating from professional lawyer organizations, this proposal was discussed and defended within a much larger scope. It soon acquired the support of major Christian organizations. A few politicians, among whom was Raila Odinga, also lent their support to this initiative. These diverse groups thus united as the Citizens Coalition for Constitutional Change (also referred to as the '4Cs'), and succeeded in persuading D. arap Moi to include constitutional reform in his political agenda. Additionally, the creation of an umbrella organization gave them an opportunity for foreign funding. This body was eventually confronted with a dilemma that it still faces today—the lawyer-based organisations were the only ones who could take pride in an alternative representation from the professional circle to which they belonged. The support of the churches to these demands, however, gave them a broad reach going beyond the Anglophone urban centres where they had been expressed. But these NGOs had other needs—the formation of a social base of influence on the prevailing authorities; and the support of politicians whose priority was not so much the establishment of a democratic system in itself as the conquest of political power.⁴ This ambiguous position towards the opposition culminated in 1997, while the forthcoming General Elections converged the agenda of both the civil society and of the dissident politicians within the ruling party, KANU.⁵

In early 1997, a National Convention was held, bringing together the three large bodies that criticized the Moi regime—NGOs, churches

⁴ For more on the debates summarized here that animated the 4C's from 1994 to 1997, see R.-M. Peters, 2001.

⁵ The former single party, Kenya Africa National Union, which had been in power from independence up to 2002.

and opposition parties, with variations in the level of involvement of each of them.⁶ The National Convention Executive Council, NCEC, gave President Moi an ultimatum, asking him to initiate constitutional reforms. At the same time, Protestant and Catholic churches⁷ met the President several times in order to compel him to launch an agenda of political openness. In view of the failure of these negotiations, the churches also gave an ultimatum to the head of State. These two deadlines were not respected. Both the NCEC and the churches found themselves in agreement and together called for demonstrations.⁸ While D. arap Moi desisted from brutally repressing them, they were able to meet all opposition, political and social movements, under a single reform banner. Ultimately, these events were as much a popular success as a political failure since they were not followed by any tangible effects.

The demands of the NGOs were relayed to Parliament while the opposition MPs agreed to vote on the budget, on condition of legal reforms. The revolt by these MPs threatened to render the county ungovernable. Similarly, the NGOs, increasingly egged on by donors,

⁶ These were the churches, albeit with large divisions between the evangelical and fundamentalist Protestants, often loyal to the political power under Moi, and the 'liberal' Catholic and Anglican churches. The latter radicalised their message in the 1990s during several traumatic events—the assassination of Robert Ouko, the minister for Foreign Affairs, the violent repression of the « Saba Saba » riots, and the first 'ethnic cleansing' organised by the authorities in Rift Valley. These events led the Catholic and Anglican churches to more openly oppose the head of state and to legitimise its position. This entry into politics was a very big step in the constitution-making process in Kenya's civil society as it is owed to the churches, right from the 1992 elections, the initial civic education programmes aimed at sensitizing the masses about multipartyism. However, despite being accustomed to working together within an ecumenical dialogue, the churches have always had difficulties in maintaining a united front during electoral periods. For more on this subject, refer to H. Maupeu, 1997.

⁷ Through the National Council of Churches of Kenya, the ecumenical meeting of the 'liberal' Protestant churches of Kenya.

⁸ A detailed description of these demonstrations and of their emergence conditions is given in R.-M. Peters, 2001.

undertook massive civic education work in order to sensitize the masses on the need for reform of the regime. Fresh demonstrations were organized at the beginning of July 1997. This time around, they were ferociously repressed, but it led to an enlarged rank of reformists. In order to break this formidable alliance, D. arap Moi opted to negotiate with some of its members. He attacked the weakest links within this coalition, by initiating negotiations with the churches and the most influential members of the opposition. NGOs were excluded on the grounds of their lack of representation. Although these initiatives were not succeeded by serious measures, they hastened the split of the reformist front. This change in the president's tactics led to the radicalization of the non-religious civil society. The NCEC threatened to declare the National Convention constituent if substantial reforms were not taken before the General Elections in December. However, in the meantime, opposition MPs chose to directly negotiate with their KANU counterparts. This process resulted in the Inter-Parties Parliamentary Group – IPPG. This informal agreement engaged its parties, or hundreds of its MPs from all quarters to advocate for wide-scale reforms: independence of the Electoral Commission of Kenya (ECK), whose members would be nominated in equal parts by the ruling party and by the opposition; the repealing of repressive laws; equal media coverage by the governmental media; and the setting up of a Commission for Constitutional Reform. Although this agreement initially was lacking approval, it severely reduced the civil society's capacity to mobilize. The co-opting of their demands by a political class in full fighting form gear alienated the associations from the political scene.⁹ Despite the disqualification of the NGOs present, their pressure sped up the inclusion of legal and constitutional reforms on the political agenda.¹⁰ Nevertheless, the measures presented by the IPPG were subjected to a law which kept barely a third of the proposals of the agreement. It was voted upon just before the dissolution of Parliament, towards the end of 1997, while D. arap Moi announced

⁹ C. Thomas, 1997.

¹⁰ A. Oloo, 2007 ; R.-M. Peters, 2001.

the General Elections for December. Making fun of an opposition that the IPPG had made into a laughing-stock, Moi was once again in a position to get rid of them.

From a political lobby to an electoral watchdog (1997 – 2005)

After his victory in December 1997, D. arap Moi appointed a Commission to negotiate constitutional reforms, in accordance with the IPPG proposals. This Commission, named after its chairman Yash Pal Ghai, succeeded in bringing together a considerable portion of the country's social forces. This gave it (the Ghai Commission) a level of legitimacy. It was also a means for D. arap Moi to defuse the mobilizing capacities that the secular civil society had displayed in 1997.¹¹ Delayed several times in its work by an executive power that wished to have control over the reform process, the Ghai Commission delivered a proposed Constitution just before the 2002 General Elections. This blew the wind out of the civil society's sails, which was still mainly composed of jurist associations, and it was hence marginalized in the electoral campaign. Nevertheless the society earned an indirect victory, with the budding NARC (National Rainbow Coalition)¹² taking up several suggestions into its programme. These associations still defend the programmes—human rights, civil freedom and the establishment of counter powers—to date. These demands served to cement an irregular NARC coalition that required such a programme to neutralize the dissidents within it.¹³ Finally, the Ghai Commission allowed the civil society to mutate in its role, one that would transform the jurist associations into political lobbies.

After M. Kibaki's victory in the Presidential election, an assembly

¹¹ H. Maupeu, 2004.

¹² A coalition of political parties created to knock down the regime of D. arap Moi during the 2002 General Elections in which M. Kibaki was the candidate.

¹³ H. Maupeu, 2003.

of delegates comprising parliamentarians and district representatives came together to debate on the findings of the Ghai Commission. These discussions, "the Bomas meetings", emphasized the transformation of the civil society associations into pressure groups. New themes then emerged on the political scene, for example women's rights. However, the debates polarized the government and hastened the death throes of NARC's already fragile electoral coalition. Actually, many of M. Kibaki's former fellow travelers¹⁴ were uneasy about granting a constitutional reform which would weaken their power. They slowed down the negotiations as far as they could, through manoeuvres that affected their popularity. Only the NDP¹⁵ faction of the government, led by R. Odinga, wanted the reforms to succeed. These reforms would have given their leader the post of Prime Minister, as had been promised in the Memorandum of Understanding signed between all the parties within NARC before the elections. Because of this, the constitutional reform process, which initially resulted in major popular consultations, was largely amended by the prevailing authorities. This was done at the risk of losing all legitimacy.¹⁶ In order to counter this, M. Kibaki decided to submit the constitutional reforms to a referendum.

The referendum campaign was decisive in recomposing the role of civil society. Having been the battle horse of the NGOs since the beginning of the 1990s, the NGOs were particularly concerned by the failure of the constitutional reform process. Although they had been paralyzed during the 2002 elections, the referendum forced the civil society to play, at the very least, a role of critical observer. Therefore, the referendum took on an existential bearing to some extent for many organisations. This was also their opportunity for the NGOs to reposition themselves as legitimate actors of political reforms. Exasperated by the

¹⁴ All from the Democratic Party (DP).

¹⁵ National Democratic Party, one of the constituents of the NARC coalition, along with the declining barons of KANU and of M. Kibaki's DP.

¹⁶ See L.W. Maina *et al.*, 2006.

authorities' reluctance to concede to reforms, the NGOs undertook sensitization measures geared towards the voters' stakes and actions.¹⁷ A preliminary civic education programme was organized for the public. Additionally, the NGOs created election watchdog groups. Several umbrella organisations and networks were created whose aim was to observe the voting process.¹⁸ The fears of electoral fraud were proved hence true, while the referendum campaign was shaken by the return of clientilistic practices of previous regimes.¹⁹ This was the perfect moment for united front, comprising NGOs attached to human rights. With the inspection of about 40 constituencies, these initiatives were a success as attested by the collapse of M. Kibaki and his allies.

THE KENYAN CIVIL SOCIETY AND THE 2007 GENERAL ELECTIONS: CHALLENGES OF ELECTORAL OBSERVATION

The experience of the referendum indicated the end of the transition begun by the Bomas meetings. Several professional went beyond judicial role that had hitherto been attributed to them. The constitutional reform process sped up its progress to a more active and transversal role of criticizing the actions of the regime. The 2005 referendum finally accorded them a new position in the electoral process. The 2007 general elections were, for the civil society, continuity of the referendum process.

¹⁷ Examples are the initiatives of the Constitutional Reforms and Education Consulting, Community-Based Education for Development, Citizen Coalition for Constitutional Change.

¹⁸ Constituency Electoral Monitoring Project, Kenya Civil Society Referendum Observation Program along with the Electoral Observers programme led by the Kenya Human Rights Commission.

¹⁹ Illegal land allocation, degazettement of National Parks, among many other processes.

Economic mobilisation factors of the civil society

The vigilance of the NGOs was motivated by several exogenous factors during the voting. On the one hand, the Electoral Commission of Kenya (ECK) debated upon since the beginning of multipartyism, had always been accused of partiality, as its Chairman and 20 Commissioners were appointed by the President. Several organisations asked, in vain, for its transformation into an independent administrative and financially autonomous body. The provincial administration, which traditionally campaigned for the Executive, were another cause for anxiety. Indeed, it appeared that the police force was dedicated to it, the ruling Administrative Police (AP) had received considerable reinforcements and new equipment in the months preceding the elections. Bypassing the regular hierarchy of the Kenyan police force, the AP, under direct orders from the President, aroused suspicions as to their integrity and those whom they served. The simultaneous decrease in human and financial resources of the General Service Unit²⁰ only added to these doubts. On the other hand, the brutal repression of the Mungiki sect in the mid-2007 was marked by several extrajudicial executions. The Kenya Human Rights Commission later revealed the existence of several graves, containing about 500 bodies.²¹ This discovery elicited the distrust of associations concerning police brutality, which the Kibaki regime engaged in. The NGOs' attention finally focused on the partisan bodies. The Orange Democratic Movement (ODM) was only formed in 2005, the Party of National Unity (PNU) was an electoral creation of M. Kibaki. The latter only saw the light of day in the election year. Moreover, these parties took the form of coalitions, which necessitated a primary selection of local candidates within the

²⁰ A paramilitary élitist police group, ordinarily charged with the responsibility of breaking up riots.

²¹ *The Standard*, 6 November 2007.

groups. The institutional weakness of the parties and the fluidity of their hierarchies resulted in control of the nomination of the parliamentary candidates from the two main political parties.

Organised in networks of several associations, the civil society evaluated the election process and the party primaries upto the announcement of the results by the ECK. Under surveillance were the education of citizens, media integrity, violence and the behaviour of the police. More concentrated on observation of the process than on mobilisation of the masses, the NGOs played the role of expert rather than militia. The Kenya Human Rights Commission is particularly symbolic of this phenomenon. It recruited its members in the 1990s, drawing from exiled academics and political prisoners. Such personal characteristics were in the line with the demands of an organisation that was fighting for democratic space from the regime.²² During the General Elections of 2007, it displayed itself more as a research and political analysis organisation. Essentially a defender of human rights, it had a more passive role as guardian of the principles of political plurality and electoral justice.

The virtues and vices of a local electoral observation

Symbolic of this desire for control of the entire electoral process, the secular Kenyan civil society and the churches came together within the Kenya Elections Domestic Observation Forum–KEDOF.²³ Two months before the election, they hurriedly sent out about 450 observers to the 210 constituencies of the country, whose mission was to report all anomalies relative to political parties, gatherings and pre-electoral violence. Finally, on the day of the voting, 17,000 observers

²² M.-E. Pommerolle, 2002.

²³ Co-directed by Koki Muli of Institute for Education in Democracy and Oliver Kisaka, of the National Council of Churches of Kenya.

descended on almost 20,000 voting stations to inspect the election process.²⁴ It is likely the scope of this mission that enabled one of the coordinators, Koki Muli, to get accreditation by the ECK on the night of 29 to 30 December, in order to verify the integrity of the counting process held at the Kenyatta International Conference Centre, KICC.²⁵ Because of this, although the network attested to the credibility of the voting process in majority of the voting offices, they contributed to questioning the ECK in the detailed accounting of votes, which were judged fraudulent.

At the end of the day, these electoral observation initiatives revealed their sanction, along with foreign organisations. Despite having been invited and accredited by the government, electoral observers contradicted the authorities, and there is the risk that they may be excluded from subsequent electoral processes. And even if these observers took the risk of criticizing the election process, their conclusions were not followed by action. However, these observations eventually served as the basis for a petition, and this strengthened the opposition in officially contesting the results without offering an alternative. Until this time, election observers only had to confirm major victories since the beginning of multipartyism in 1992. From a functional point of view, observers contributed to increasing the legitimacy of the victor by attesting to the regularity of his ascension to power conforming to imported democratic standards. The 2007 elections posed the new problem of a highly contested poll, with an uncertain result. This time around, the civil society had to ratify a political crisis, without even having the means to advance a solution to this state of affairs. In the final analysis, the normative standards of the observers should be put

²⁴ Kenya Elections Domestic Observation Forum, « *Preliminary Press Statement and Verdict of 2007 Kenya's General Elections* », 31 December 2007.

²⁵ Along with, on behalf of the civil society, J. Melli of the Association of Professional Societies of East Africa, B. Sihanya of the Faculty of Law at the University of Nairobi, and H.M. Yusuf, of Supreme Council of Kenyan Muslims – SUPKEM. In addition to these representatives, two members from every political party were admitted.

to task. It has since been admitted that, in Kenya, the legitimacy of leaders was historically built on a clientilistic and patrimonial base. There is now room to interrogate the relevance of the electoral norms advocated by the civil society. The players and the referee were not playing to the same rules. Hence, legitimacy of political leaders is the fruit of a weak institutionalization of State power, what comes to light is a perverse effect of electoral observation: the financing of these operations by foreign donors created an eviction effect that sanctions public institutions, which are normally dedicated to the surveillance of the elections. The money given to the civil society did not contribute to the development of the administration, but more to the 'privatisation' of state functions. Evidently, the civil society's adoption of the electoral standards given by the international institutions is a main source of extroversion, which contributed to a collection of resources, this resulting in a huge personnel base. As a confirmation, it allowed the civil society — whose representation is questionable — to morph into a legitimate actor on a political scene, whom it would be naïve to consider as being neutral. The crisis which followed the elections tended to confirm this view.

PEACE WITH OR WITHOUT JUSTICE : A DIVIDED CIVIL SOCIETY

The crisis, initiated by strong suspicions of voting irregularities, brought the presidential team back to back with litigation and an opposition that could also have been accused of electoral fraud. As large portions of the country plunged into violence, the legitimate political representatives were unclear. Under these circumstances, then, the civil society seemed to be an ideal mediator. However, this situation greatly polarized: there was a clear pacifist faction which considered a return to calm

as preferable to respect for democratic principles and the opposition's political expression. Opposing this, a camp regrouped under the banner of upholding democratic principles. This latter insisted that a return to calm would only be sustainable if the government agreed to respect democracy and to resolve various latent social problems. Top of these challenges was the redistribution of land and economic resources, and a constitutional reform specifically geared to balance Executive Powers. This split often marked the border between secular groups and the churches. Divided by this conflict in interpretation, the civil society organisations were in a competition whose challenge was to find the legitimate representation of the crisis.

Polarisation of the civil society

The political crisis deeply divided the Anglophone civil society. Each of these camps claimed to play a role in the negotiations between the two political parties. The first group that can be distinguished is the organisations that consider peace as a priority in the resolution of the electoral differences. For this group, it didn't matter much who won, as long as the violence ended and the country was united. Along with the evidence that the sympathisers of M. Kibaki and the PNU brought forward, this faction also had a strong Christian tone. Specifically, it should be noted that the Anglican and Catholic churches of Kenya campaigned in favor of M. Kibaki, and acted as a relay for him during the campaign. This situation was intensified by the alliance made between R. Odinga and the Muslim communities.²⁶

The most notable personality of the pacifist group was Ambassador Bethuel Kiplagat. A specialist in conflict resolution with more than 20 years experience, he had presided over negotiations during the

²⁶ International Crisis Group, « Kenya in crisis », *Africa Report*, n°137, 21 February 2008, 35p.

Ugandan conflict in 1985 – 1986; he led a team on conflict resolution in Mozambique in 1988 – 1992, until he became Kenya's special envoy for the peace process in Somalia. Currently, he is the director of the African Peace Forum, member of the International Crisis Group and Permanent Secretary in the Kenyan Ministry of Foreign Affairs. Renown for peace in Africa, his message has deep Christian undertones. B. Kiplagat faces the crisis from the view of God's creation rather than antagonistic interests. His assessment of the situation is that it is a result of sin and that there would be public prayer, forgiveness and reconciliation.²⁷ In his wake, several *ad hoc* organisations became heralds of unconditional peace. An example of this is the "Heal the Nation" campaign that organised a deposit of flowers for peace in the City Centre. All these movements had ostensible political sympathies. At the beginning of February, B. Kiplagat led a delegation of Concerned Citizens for Peace to distribute water, food and telephone calling cards to the anti-riot police stationed at Uhuru Park.²⁸ This latter were charged with preventing access to the park and thus any political demonstrations. The same goes for Maendeleo ya Wanawake, which led female processions entreating the belligerents to bury the hatchet. They did this at the St. Paul's Cathedral in Nairobi. These group processions were then in tandem with the Catholic priests on injunctions to the government against using security forces to restore order and bring an end to human suffering.²⁹

These appeals for unconditional peace resonated with those of several other organisations whose interest was in a cessation of violence, albeit to the detriment of a political solution. Numerous hotel and tourist associations, and especially professional and business associations were

²⁷ « Interview with Ambassador Bethuel Kiplagat », in *Wajibu, a Journal of Social and Religious Concerns*, Issue 17, [On line] URL : http://africa.peacelink.org/wajibu/articles/art_2122.html. Consulted on 20 March 2008.

²⁸ *The Standard*, 5 February 2008.

²⁹ *The Standard*, 1 February 2008.

a part of it.³⁰ The Coast Kenya Association of Hotelkeepers estimated that several hotels at the Coast and about 20,000 people were technically unemployed as a result of the post-electoral situation.³¹ Banks, together with churches and the government media, published peace appeals in the press.³² This shows that the majority of churches and several business associations, in their unconditional appeal to peace, were allies of the Kibaki regime.

Parallel to this **pacifist civil society**, a **faction of organisations** defending electoral justice and critical of M. Kibaki's civil 'coup d'État' was organised. The first to make known their rejection of the results announced by the electoral commission was the Law Society of Kenya – LSK. It contested the validity of the results the morning after the election and rapidly suggested the setting up of a transition government in order to plan new elections. This jurists' organisation lay violent charges against the electoral commission. They demanded that the commission be relieved of their duties and that an independent body takes over the organisation of elections in the constituencies where the results had been cancelled.³³ Finally, its vision of the crisis was much more political than that of the pacifist organizations. The LSK supported the crisis resolution process led by Kofi Annan, but nevertheless called for a solution based on power-sharing with the creation of the post of Prime Minister with executive powers. Thus, it once again took up its battle horse of the 1990s, by calling for the adoption of the initial constitutional reform proposals, the Bomas Draft, which emanated from popular consultations. The demands of the Kenyan Chapter of the International Commission of Jurists – ICJ,

³⁰ For example the Kenya Private Sector Alliance, *The Standard*, 20 January 2008.

³¹ *The Standard*, 21 and 24 January 2008.

³² An advertisement by the Anglican Church of Kenya, the Methodist Church of Kenya, the Kenya Broadcasting Corporation (public television channel) and Equity Bank, « Restoring Hope Together », published in *The Standard*, 18 January 2008.

³³ *The Daily Nation*, 10 February 2008.

were of a similar nature. The impasse in which the country found itself was resolved in the law, from where all power emanated. In January, the ICJ demanded the creation of an interim government, based on a coalition principle, to be led by civil servants and technocrats. Its mandate would be to stabilize the country and solve the problem of the internally displaced persons. They launched a verbal attack on the ECK, which despite what its Chairman claimed still had the power to cancel the elections. The Constitution actually provided that all constituted bodies had the power to cancel its own acts. For the LSK and the ICJ, just like for many other secular jurist organisations, the crisis was the proof that constitutional reform that would limit the powers of the Executive was urgently needed. The situation demanded not just a temporary political regulation but a complete overhaul of the juridical system for the country, and a new social contract with Kenyans.³⁴

In January, a lobby comprising about 30 Kenyan organisations was created, focusing on a demand for unconditional civil peace. There was a large variety of associations in this group: jurist organisations such as ICJ, LSK, Kituo Cha Sheria and East African Law Society; human rights protection lobbies such as the Kenya Human Rights Commission; and development organizations such as Mazingira Institute. Led by the IED, the electoral observation unit of KEDOF was also included. The Kenya National Commission on Human Rights took over the leadership of this group, under the collective name of Kenyans for Peace with Truth and Justice – KPTJ.

The political position of the leaders of these organisations was quite similar. They first supported the declarations of the KEDOF observers who had recorded electoral fraud during the vote counting

³⁴ *The Standard*, 27 January 2008.

process on 30 December 2007.³⁵ K. Muli, of the IED, declared to the press that the 2007 elections had the makings of a 'coup d'État' and that it was a disastrous day for Kenyan democracy.³⁶ Maina Kiai, head of the KNCHR, agreed with this assertion, in the months prior to the elections, the KNCHR had warned of possible fraud by a biased electoral commission.³⁷

The KNCHR is a public institution, legally established by law in 2002 as an independent commission charged with the protection of human rights in the country. Since 2003, the commission has been headed by M. Kiai, an extremely active militant and a lawyer by profession. Before taking up this position, he founded the Kenya Human Rights Commission in 1992, and was its Director until 1998. He actively participated in the battle for constitutional reform in the 1990s, within the 4Cs, which at that time was in the NCEC. He was then appointed Director of the Secretariat of Amnesty International in London. He held this position for three years before becoming the Director of African Programmes of an American NGO, the International Human Rights Law Group. This is a foundation that develops financing and cooperation programmes with national human rights protection groups. He was the main actor of the lobbying led by KPTJ in the post-electoral crisis. His position as chairman of a public institution, going by his past as a militant jurist, made him one of the most legitimate actors on the national scene and a person with whom international institutions and mediators had a special relationship. He played a crucial role in the conflict between NGOs on the definition of the crisis, as well as in the unacceptability of a fraudulently elected President.

Finally, several other groups led initiatives aimed at the protection of

³⁵ 'Countdown to deception: 30 hours that destroyed Kenya', *Kenyans for Peace with Truth and Justice*, January 2008.

³⁶ Reuters, 31 December 2007.

³⁷ This was done in a memorandum addressed to President M. Kibaki in March 2007.

human rights which were threatened by a politically explosive situation. This resulted in the Amani groups. Amani Mashinani Initiative is a union of Kenyan associations for the protection of human rights. It is mostly established in informal residential settlements of the country. The groups distributed humanitarian aid and held reconciliation meetings aimed at uniting local political leaders. Additionally, Amani Focus attempted to organise tours by the political leaders to the violence-prone areas, so that they could spread a message of peaceful resolution to the conflict.³⁸

Crisis caused by a repeat of the voting: the KPTJ and criminalisation of the ECK

The KNCHR stands out by its assertion of independence from the government. Before the election, the commission had been requested by the government to draw up a report on violence and human rights violations during the campaign period. At the beginning of January, the government, through its spokesman Alfred Mutua, detained this report. They zeroed in on the issues that could result in getting R. Odinga's ODM charged before the International Crime Tribunal in the Hague. The government accused ODM of 'ethnic cleansing' and of having premeditated and precipitated violence that resulted in hundreds of deaths in the Rift Valley and the western parts of the country. In reality, these were old accusations, rooted in the controversy during the campaigns that accompanied the *majimbo* debate. M. Kibaki's camp had accused the ODM of stirring up ethnic cleansing under the guise of regionalism.³⁹ From the moment that the electoral rigging plunged the country into violence, faced with police repression, the ODM was the first to accuse the government of 'ethnic cleansing'. This accusation

³⁸ Kenya Human Rights Institute, *Special Brief: Civil Society Responses to the Kenyan Crisis*, February 2008.

³⁹ Cf. International Crisis Group, *op. cit.*

probably sped up the involvement of the international community in the crisis resolution. However, both the presidential camp and the opposition continued in mutual accusation of these crimes, consequently resulting in the terms 'genocide' and 'ethnic cleansing' constituting a repertoire of widely recognized terms.⁴⁰

The KNCHR refused to present its report to the government, which it considered illegitimate, and said they would only settle the score in Parliament. Additionally, the spokesman of the KNCHR announced that the commission had decided to inquire into extra-judiciary executions committed by the police and security forces during the repression of riots and demonstrations. In the election observation report was presented in mid-January, the commission stressed on the irregularities throughout the voting process, assessing the rigging in favor of M. Kibaki at more than 450 000 votes. This was followed by an attack against the international organisation Human Rights Watch, that published a report stating that the post-electoral violence had been organized and premeditated by the ODM.⁴¹ The KNHRC, which can pride itself on having a large body of international experts at its disposal, led a counter inquiry in a majority of the towns affected by violence, in Kericho, Nakuru, Eldoret, Kisumu, Kakamega and Kitale.⁴²

At the beginning of January, Kenyans for Peace, Truth Justice (KPTJ) come up with a brief manifesto recognising the peace efforts led by the churches, but attributed the main cause of the crisis to a rigged election.⁴³ It also denounced police brutality as equal to the atrocities of the militia and political violence. The group openly declared that it did not recognise M. Kibaki as head of the Kenyan

⁴⁰ *The Standard*, 3 January 2008.

⁴¹ *The Standard*, 30 January 2008.

⁴² Its members were involved as observers in the conflicts in Darfour, Sierra Leone, Kosovo, East Timor Oriental, Cambodia and the Balkans. One of them even questioned the crimes ascribed to the Nazi regime. *The Standard*, 5 February 2008.

⁴³ Online statement by *Kenyans for Peace, Truth, Justice*, 5-01-2008, URL: <http://www.wedo.org/files/Kenyans%20for%20Peace,%20Truth%20and%20Justice.pdf>. Accessed on 25 March 2008.

government, and asked the international community to do the same. By mid-January, the group had become more radical in the face of the unconditional pacifists who threatened to bury democracy in the name of security. As a reaction, it changed its name to Kenyans for Peace, with Truth and Justice. It made use of KNCHR conclusions in a much more explicitly militant manner. At the end of January, it published a report titled *Countdown to deception: 30 hours that destroyed Kenya*, in which a blow-by-blow account of the entire fraud committed by the ECK was given. Consequently, the KPTJ demanded that S. Kivuitu, along with his 21 commissioners be charged in court. In addition to this, the NGOs prepared a document listing all the issues that they blamed the commission for, amounting to several crimes. This was aimed at ensuring that negotiations for real constitutional reforms returned to the agenda, which guaranteed the separation of powers and independence of the judiciary. Basically, the violence and the impasse in which the country was in were only the outcome of a reform process that has been delayed too long. These initiatives to sue Kibaki's regime and to place constitutional reforms on the agenda largely dominated the political scene.

However, apart from accusing the ECK, the organisations for the protection of human rights **were careful about attributing responsibility** for the violence. It appeared that dialogue would be the only means to resolve the crisis and it therefore seemed imprudent to blame one camp more than the other. Several times, leaders such as M. Kiai suggested that the situation was only a result of the latent conflict that had eroded the country since the beginning of the 1990s—the militia had not been disarmed; land conflicts had not been resolved. In order to allocate responsibility for the violence, the organisations called for the setting up of an independent international commission. They were wary of supporting the demonstrations organised by ODM, for fear of deadly outbursts.⁴⁴

⁴⁴ Cf. for example M. Kiai, Discours au Congrès américain, 6-02-2008, [on-line] URL : <http://allafrica.com/stories/200802080688.html>. Accessed on 25 March 2008.

ATTACKS AND COUNTER-ATTACKS: SURVIVAL STRATÉGIES AND POLITICAL POSITIONING OF THE CIVIL SOCIETY

In its undertaking for a postponement of the regime's reform agenda, the secular civil society initially came up against counter-attacks from M. Kibaki's team. Several of its (civil society) most eminent representatives were threatened. However, the commencement of round of talks under the guidance of K. Annan opened up an arena in which the civil society could be reconstituted as a legitimate and credible intervener.

The government camp—caught between response and repression

At the beginning of January, the ODM appealed to its supporters through the press to stage a huge demonstration against the 'stolen' elections. The government responded, through the press as well, insisting on the illegality of political gatherings and emphasizing the regularity of the vote. Peculiarly, the sympathisers of M. Kibaki often attempted to mimic the announcements of the civil society in order to counter the mobilisation calls launched by the opposition. This saw the publishing of a series of announcements signed by the Kenyans for Peace and Progress, an association with neither address nor location, which claimed to be founded on the eternal principals of democracy, honesty, truth and justice. The announcements, running on two full newspaper pages, depoliticized the stakes of the demonstrations in a paternalistic tone, basing its argument on the misfortunes of the ordinary Kenyan, victim of the opposition's political maneuvering. Emphasizing the worthlessness of demonstrations and the number of violence victims, the adverts then published an inventory of the MPs' privileges: salaries, official vehicles, exorbitant bonuses. The group postulated that the MPs would never send their children to risk their

lives in such ventures, concluding, “*Say no to unlawful political activities that will not feed, clothe, or educate your family.*”⁴⁵ Kenyans were referred to their disillusion, their own misery and the powerlessness of political mobilisations in the resolving of daily challenges. This phenomenon indicated that the civil society and its modes of expression were taken seriously by the government camp, which in turn launched whitewashing tricks in the media to counter these messages.

Playing their classical card of intimidation, the M. Kibaki camp attacked leaders who challenged the validity of his re-election. Consequently, the Nobel Prize winner, Wangari Maathai, having been defeated in her quest for the Tetu Constituency parliamentary seat, raised her voice even louder as she ran no political risk. Contesting the validity of the governmental Peace and Reconciliation Commission nominated by M. Kibaki and headed by Vice-President Kalonzo Musyoka, she declared that the chaos was the result of the President’s policies that had been carried out since 2002.⁴⁶ Apart from this she demanded that the government be held accountable for the victims of violence and the destruction, criticizing its incapability to protect Kenyan citizens.⁴⁷ The very next day, the bodyguards that she had had since winning the Nobel Prize, were withdrawn.⁴⁸ Also affected by governmental intimidation was M. Kiai, for whom pressure from the authorities was not a new experience. Fearing for his life, he was obliged to temporarily flee the country.⁴⁹ In September 2006, his criticism of the government resulted in his being accused of corruption and nepotism, in his position as chairman of the KNHRC. The intimidation of critics of Kibaki regime was child’s play to the supporters.

⁴⁵ *The Standard*, 15 January 2008.

⁴⁶ *The Daily Nation*, 21 January 2008.

⁴⁷ *The Daily Nation*, 23 January 2008.

⁴⁸ *The Daily Nation*, 24 January 2008.

⁴⁹ *The Standard*, 24 January 2008.

Extroversion and response of the political scene

The start of negotiations for an exit from the crisis led by K. Annan obliged the civil society to play the role of legitimate actor in a new set-up. Although having the *de facto* role of the opposition by challenging M. Kibaki's legitimacy, it (the civil society) was consulted as a neutral player before beginning of the talks. However, it is mainly by intense lobbying abroad that these associations, headed by KNHRC, were able to impose their point of view on the negotiators in setting the agenda for an end to the crisis. These international homologation techniques towards a local official recognition revealed local extroversion strategies.⁵⁰ In mid-January, M. Kiai presented himself at the African Union conference, where the situation in Kenya was high on the agenda, in order to bring forth his views and to block the presence of Kibaki who intended to crown himself Head of State. He then hurriedly dispatched a team from the KNHRC on a European tour: first to Geneva, in order to alert the United Nations on the violations of human rights that the Kenyan police were accused of.⁵¹ Then, it was off to England to discuss the situation with Lord Malloch-Brown, the British Minister of African Affairs, who K. Musyoka was also to meet. The final point of this tour was M. Kiai's address to the American Congress. Invited by the Committee for Africa and World Health, he gave assessment of this situation, the political, social and legal crisis, focusing on these more than genocide or ethnic cleansing. On these grounds, he asked the United States to freeze all military aid and trade with Kenya, until an interim government was formed. He opportunely requested that all humanitarian aid be channeled through NGOs rather than State organs. Finally, he called for an independent foreign investigation on the results of the presidential election. His demands were taken up by the Democrats in Congress. It is significant that the very same week, the US Secretary for African Affairs, Jendayi Frazer, came up with the

⁵⁰ J.-F. Bayart, 1999.

⁵¹ *The Daily Nation*, 22 January 2008.

notion that M. Kibaki's camp might be victims of ethnic cleansing.⁵² This was the perfect opportunity for the Democrats to use the baton that M. Kiai had offered them, to fight the Republicans with.

Thus armed with the approval of many high-ranking foreign representatives, M. Kiai and the KNCHR representatives coalesced into a pressure group of the Kofi Annan negotiation team. In the absence of strong social support in Kenya, they managed to put on the agenda several problems that the government would have preferred to avoid. The international ratification, facilitated by the professional biography of its main broker, thus served as an internal official recognition of the records. KNCHR successfully requested the establishment of a Truth, Justice and Reconciliation Commission, whose role it would be bring up genuine legal, social and economic issues from the crisis.⁵³ The issues of constitutional reform and the creation of a counter authority institutionalised by the position of Prime Minister with executive powers, returned to the forefront with massive support.

Subsidiary reasons for the crisis

It is significant that the uniting of the secular civil society with the KPTJ group did not completely dilute the multiple causes represented by its various components. The use of a woman's image by the two antagonistic factions of the civil society is a case in point. Several times, the pacifists referred to women as the first victims of post-electoral violence, and as the main guarantors of peace. It is a procession of women that deposited flowers and provisions at the feet of armed policemen at Uhuru Park. Groups of women for peace were formed. The democratic civil society, however, preferred to politicise the issue. They did this by not allowing the pacifists to have the monopoly of a

⁵² *The Daily Nation*, 8 February 2008.

⁵³ *The Daily Nation*, 15 February 2008.

feminist viewpoint and the use of a female figure. Thus, the Federation of Women Lawyers–FIDA, accused the police of doing little to stop the harassment of female refugees in Naivasha. Through its chairperson, Violet Awori, FIDA became part of the KNHRC committee on this issue. The committee announced that the problem would be brought to light as soon as order was re-established, sending the women's cause back to its subsidiary. FIDA's demand must not be seen in isolation from the clear ingenuity in its declaration. In the battle for the establishment of an official representation of the conflict, the appropriation of a specific cause through a camp is a sizeable challenge.

Conclusion

The actions of the Kenyan civil society during the 2007 elections raised several questions that have yet to be answered. The first is that of its representation. The importance taken by international approval in the national recognition of this civil society was evident. Beyond the resources of the extroversion, it appears that structuring the civil society to churches was a major factor in its social recognition. It also seemed to be the only resource that could go beyond the Anglophone professional and urban framework for a resolution of its problems. Also outstanding is the multiplicity of its organisations, in comparison to the feeble number of the noteworthy individuals of this civil society. The tide of acronyms that accompany every political failure, notwithstanding, going by press articles, the true forces remain very few. Therefore, it can ironically be stated that at the beginning of the 1990s, the civil society in Kenya comprised 30 people spread out in 60 organisations.⁵⁴ Things do not seem to be much different today, where NGOs often appear to be no more than names borrowed by individuals with NGOs multiplying in tandem with their militant identities. The plethora of organisations is often represented by the same individual actors.

⁵⁴ R.-M. Peters, 2001.

Finally, the issue of the civil society's representation of human rights seems to be much more important as it is separated from the militarized and vernacular sphere of influence operational in rural and urban areas. These latter do not seem to be captured by political negotiations at the higher echelons of human rights associations have no common forum with the militia, or even with local organisations who made distribution of land and economic resources their *raison d'être*. This leads to the issue of the civil society's independence vis-à-vis the positions taken by the political parties. The deep split apparent in Kenya today produces a situation where the civil society plays a *de facto* role of the opposition. Fighting against the possibility of a democratic alternative, it still acts as an opposition whose aim is not so much respect for political plurality as access to power. This was clear displayed by the civil society rallying behind M. Kibaki and his dashed hopes in 2002.

Ultimately, it would be worthwhile to recapture the **terms of an** analysis made ten years ago by H. Maupeu and J. Lafargue.⁵⁵ On the eve of the 1997 General Elections won by Moi, the two researchers bitterly acknowledged the existence of a civil society that, despite its organisation and plurality, turned out to be incapable of overthrowing a regime that had become unpopular. This echoed E. Gellner's thought,⁵⁶ who posited that the contemporary civil society found its strength in economic growth and civic duty, arguing that although these components had been well presented within the organisations studied, their projects were too radical and contradictory to be operational. This statement still holds water today. The projects of the churches and human rights organisations were shown to be divergent during the crisis, while their *de facto* respective convictions led to partisan support. Although these were certainly sensible points of view, they were

⁵⁵ H. Maupeu and J. Lafargue, 1998.

⁵⁶ E. Gellner, 1991, cited in H. Maupeu and J. Lafargue, 1998.

opposed to each other. Beyond this basically conjectural assessment, it should also be noted that the civic duty advocated by the organisations was strongly damaged by the unequal redistribution of the fruit of economic growth in the past five years. Rather than strengthening the rules and institutions of democracy, one could hypothesise that these economic inequalities emphasized the local and imaginary conflictual ethnic identities. The huge geographic polarisation of the election results tends to confirm this. From the moment that the voting results were declared as having been rigged by the governmental team, the civic lessons offered by the associations have had little value. Although the revolt during the first days was undoubtedly guided by the feeling of a rigged election resulting from popular domestication of democratic standards, these were possibly only for the losers of the day. For a short while, they ceded to a collective imagination of exit from the crisis based on evictions and “each to his own.” This former, a product of a very radical interpretation of *majimbo*, was carried out by militia who to date have not been disarmed, despite a fortunate cessation of the tensions. The events at the beginning of 2008 therefore show the fragility of the human rights civil society, of its ideals and its victories. The standards that the associations still had, from an operational point of view, are still merely a body of negotiable norms in terms of current partisan interests. Whereas the exit from the crisis is a reason for optimism, statements by the authorities, and especially the weaknesses of the civil society, are not very different from what was ten years ago.

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ELECTED LEADERS, MILITIAS AND PROPHETS:

Violence in Mount Elgon (2006–2008)

*Claire Médard**

At the Kenya–Uganda border, on the mountainous terrain of Mount Elgon, an armed militia has been fighting the State since 2006, over land issues. The militia won a military victory in November 2007 and its presumed leader was elected to parliament in the December 2007 elections on an Orange Democratic Movement (ODM) ticket. This paper aims to shed light on the current crisis in Kenya by deciphering state legitimacy and the challenge to this legitimacy in the local arena. The ethnic dimension of political competition in the country is tackled through this.

In Mount Elgon, along the Kenya-Uganda border, the chronology of violence was different, compared to the surge of post-election violence in Kenya.¹ The run-up to elections was particularly brutal. There were reports of approximately 600 deaths and 50,000 internally displaced people between September 2006 and January 2008.² At the heart of the conflict is the Chebyuk area, which covers 10 km² carved out of the forest reserve and converted in the 1970s into a farming

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¹ I would like to thank all those who helped me come up with this text, especially Hélène Charton. This paper is a result of a study carried out between November 2004 and May 2007 in the Mount Elgon area (along the Kenya-Uganda border).

² The number of deaths was not well documented. As for the number of refugees, figures quoted should be compared to the 2007 population estimates given by Valérie Golaz from the Institut national d'études démographiques (Ined, France). The population of the most affected area, Chebyuk, was 35,000 people at the beginning of the conflict (personal statement).

settlement by the State for the Kalenjin-speaking people of Mount Elgon, who form the group called Sabaot. The invention of the Kalenjin ethnonym came about ten years before the term Sabaot came into being in mid-1950s.³ The success in using this name might be understood in relation to the territorial affirmation of a minority, both in terms of land and administration. Political rivalry with the neighbouring Bukusu, a sub-tribe of the numerically larger Luhya ethnic community, led to inter-ethnic tensions and resulted in the creation of an electoral constituency for the Sabaots (Elgon) from 1963 and later on, in 1993, a district (Mount Elgon) which are co-extensive. The constituency brought together the Bok community of Cheptais Division to the west, the Kony community of Kapsokwony Division to the east, and the Chepkitale Division from the top of Mount Elgon, which is claimed by the "Ndorobo" community. Also part of the Kalenjin-speaking communities of Mount Elgon are the Bongomek, who come from the Bungoma region to the south and the Sabiny (or Sebei), who come from the northern slopes of Mount Elgon in Uganda.

By the end of 1980, rifts within the united front of the Sabaot became evident with a dissident group insisting on a separate "Ndorobo" or "Ogiek" identity (terms usually describing hunters and gatherers, used in this case to refer to pastoralists) to claim indigenous rights to land. Just like the unity in Kalenjin ethnicity championed by President Moi was denounced by a section of Sabaot leaders, advocates of Ndorobo ethnicity charged that the term Sabaot served first and foremost the interests of land grabbers, "land eaters". The political importance of the various Sabaot sub-tribes, including the Ndorobo, took momentum at that time and translated into a conflict over land that is currently tearing them apart in Chebyuk. Though the current conflict marked the end of the consensus on Sabaot ethnicity, the Sabaot Land Defence

³ G. Lynch, 'Negotiating ethnicity: identity politics in contemporary Kenya,' *Review of African Political Economy* 33 (107): 49-65.

Forces (SLDF), a militia group put together at the beginning of June 2006 in the area, chose to use the term, thereby declaring that a united Sabaot front still benefited some people. Chebyuk, the Promised Land, became cursed when conflict over land caused the implosion of a larger alliance along the lines of Sabaot ethnicity, even though this level of ethnic mobilization did not disappear altogether. Far from putting an end to ethnic categorization, this conflict was a testimony of the renewed success of increasingly exclusive ethnicity.

The conflict under study is a cog in the wheel of ethnicisation of violence. In Mount Elgon, people therefore end up identifying themselves as Bok, Ndorobo, etc. Those who do not subscribe to this thinking, generally those who are moderate, are eliminated or forced to flee. The banner of ethnicity was used by various actors to mobilize support. This was demonstrated since independence through statements by Kalenjin leaders who maintain that Kalenjins, an oppressed minority, have a historical right in the Rift Valley Province, or by Sabaot leaders who say that the Sabaot, an oppressed lot within the Kalenjin minority, have an ancestral right over Mount Elgon... Redress of "historical injustices" thus demanded mask the strategic dimension of these identity affirmations, which must be understood as part of the competition for State power and State resources, which translates from top to bottom into electoral fights and land conflicts. Mobilization around ethnicity cannot be dissociated from the way the State operates and particularly from the neo-patrimonial political system and practices.⁴ This paper will begin with a discussion of the history of the settlement in Chebyuk, followed by a focus on the political crisis and finally conclude with the militia watershed⁵.

⁴ J.-F. Médard, "La crise de l'État néopatrimonial et l'évolution de corruption en Afrique subsaharienne", *Monde en Développement*, vol. 26, No. 102, 1998, pp. 1-13; D. Bourmaud, *Histoire politique du Kenya. État et pouvoir local*, Paris, Karthala, 1988.

⁵ The article was written before March 2008 and the massive military intervention in Mount Elgon which will not be addressed here.

CHEBYUK: A STATE CONTROLLED AGRICULTURAL FRONTIER

The State took the lead in the process, which resulted in the clearing of a vast area of the forest situated on the southern slopes of Mount Elgon. This is what makes Chebyuk a state controlled agricultural frontier. Since its creation in 1971, land allocations and access to forest resources are managed in a neo-patrimonial style, which allows institutionalized corruption and gives rise to political patronage generally practiced along ethnic lines. The concept of neo-patrimonial State enables one to identify the way in which forms of personal power combine with institutional power, leading to confusion between public and private spheres. The land crisis and the violence that arises there from are deeply rooted in this system of neo-patrimonial regulation and in associated authoritarian practices, such as measures of territorial control perceived as arbitrary and carried out in a repeated fashion locally in Chebyuk and in areas neighbouring natural reserves.

The clearing and settlement of the Chebyuk area cannot be dissociated from the political history of the Elgon parliamentary constituency which was created in 1963 in favour of the local MP Daniel Moss, one of the rare Kalenjins who supported Kenyatta's Kenya African National Union (KANU) from inception. Moss' support for KANU is explained by the fact that the Bukusu, rivals of the Sabaot, with whom they then shared a district, supported Kenya African Democratic Union (KADU). Kenyatta's rule in Kenya and Moss' term as MP for the Elgon constituency went hand in hand (1963-1978). Moss belonged to the Bok community (the most numerous sub-group) just as the other MPs who succeeded him in Elgon constituency: Wilberforce Kisiero (1979-1992), John Serut (1998-2007) and Fred Kapondi (from 2007), except for Joseph Kimkung (1992-1998) — an ally of Gideon Moi, President Moi's son — who belonged to the Kony

sub-group. These different parliamentary mandates had an impact on the ground in Mount Elgon through the renewal of political patronage, land distribution and redistribution. As the years went by, settlement in Chebyuk became more complex and the right to land became more hotly contested.⁶ There are two very distinct settlement periods: the first from 1971 to 1989, the year the Moi government effected land reforms, and the second between 1989 and 2006. The crisis that has hit the area since 2006 has resulted in a wave of displacements.

First settlement

The transfer of residents from the Chepkitala high altitude moors in Chebyuk was the result of two-fold reasoning by the administration: create territorial unity among the Sabaot and get human beings out of the forest and protected reserves of Mount Elgon. The transformation of the mountain into a vast natural reserve began under the colonial government with the demarcation of the forest reserve towards the end of the 1920s, followed by the creation to the east of a national park between 1948 and 1968 and finally, the creation of a reserve in 2000 in the Chepkitala high altitude moors under management of the local authorities in Mount Elgon District.

During the first settlement period, about a thousand families were officially settled in an area covering 4 km². By the mid-1970s, a much larger area was under clearance. Originally, the change of official status of the forest land to pave way for the settlement of small-scale farmers was restricted to the area around Chebyuk and Emia villages situated respectively in the north-eastern and the south-western quarters of the currently cleared area. In collusion with the local administration and

⁶ S. Ghezali, *Histoire contemporaine d'une communauté rurale du Kenya. Les Sabaot de Chepyuk (Mont Elgon) de 1930 à nos jours*, mémoire de maîtrise, Université Paris I, 2005.

the Forest Department, the neighbouring sections of Kopsiro, (south-eastern quarter) and Chepkurkur (north-western quarter), which were protected areas, were cleared without being degazetted as forest land. It is the whole of this cleared area that is today popularly known by extension as Chebyuk. Compared with the initial perimeter, the legal forest excision passed in 1974, the area under cultivation had probably doubled by the eve of the 1989 reforms.

It is important to note the diversity in status of the occupants of land in Chebyuk at the time. Some appeared on the original lists of beneficiaries of the land distribution program while others did not. During the initial period, land distribution was quite inequitable (from one acre to over 50 acres. One acre equals 0.4 hectares). The first to arrive in Chebyuk were either from Chepkitale, higher up in the mountain (they are the ones that are today called Ndorobo or Mosop), or from areas below the forest reserve (Bok, Kony, Bongomek, and Sabiny collectively called Soy). These different communities were then closely linked and these links were renewed in the 1970s through alliances forged during the reclamation of this forested area.⁷ Although land was subdivided and allocated on an individual basis, the whole area retained its status of government land. No legal land transactions could be conducted in the entire cleared area of Chebyuk due to lack of land registration records, while at the same time title deeds were issued in the neighbouring areas where the status of land was different. This did not, nevertheless, prevent transactions involving these parcels of land: they were sold, bartered in exchange for work. These contracts were locally recognized although they were not official. Clearing forest land required a lot of work. Among the resettled Soy, the number of Bok, MP Daniel Moss community, was large. So the creation of Chebyuk

⁷ C. Médard, "Indigenous' land claims in Kenya: a case-study of Chebyuk, Mount Elgon District", in W. Anseeuw and C. Alden (eds.), *The Changing Politics of Land: Domestic Policies, Crisis Management and Regional Norms*, Pretoria, Human Science Research Council Press, to be published in 2008.

and the first period of settlement strengthened support for his bid to represent Elgon constituency.

After Daniel Moss, Wilberforce Kisiero took over the seat in 1979 and also sought to leave his mark over the Chebyuk settlement. At the end of the 1980s, a process of legalization of land occupation through registration was to start and new applicants were to be considered with the opening up of new land for settlement (new generation of Ndorobos and people evicted from other areas of the Mount Elgon forest reserve), a new land grabbing opportunity presented itself.⁸ This exercise was not to benefit minority groups, the poor and the landless but MP Wilberforce Kisiero's political clients—though the MP defended himself against these accusations—and individuals with State connections. Against all expectations, the central government under President Moi moved to act against the corrupt practices or rather decided to act against the MP for his own reasons. The ongoing process was halted and radical land reforms were announced. The reforms, which were introduced in 1989, depict the end of the political favour of the MP, who lost his seat in the next elections in 1992.

Land reforms

The land reform introduced under the Moi regime questioned the *status quo* and existing land distribution in Chebyuk. To implement this reform, the government had to use force and upset all Chebyuk residents. With the cancellation of initial land allocations, all transactions which took place subsequently from the start of the settlement were also erased. The government decided to fight encroachments on forest land. It strived to restore areas with planted trees but had to give up following local protests. The occupation of the entire area of cleared

⁸ C. Médard, "Ethnic politics, land and administration in Chebyuk (1971-2008). Mount Elgon, Kenya", *Journal of Eastern African Studies*, to be published in 2008.

forest land totaling 10 km² was legalized in 2000 and 2001.⁹ During this reform in Chebyuk, the government undertook the allocation of land itself, creating plots of 5 acres (later 2.5 acres). All the residents were therefore forced to move to the new parcels of land they had been allocated. Newcomers settled at the expense of migrants who had come before them and who had cleared the forest but were denied rights to a plot. Moss and Kisiero supporters found themselves with no land or with smaller pieces of land. The redistribution process was carried out in three phases. Land allotment letters were sent out from 2002 for phases 1 and 2 and only in June 2006 for phase 3. The release of the final list of beneficiaries of phase 3 in June 2006 should have marked the end of a state-controlled agricultural frontier but in reality it marked the beginning of an armed conflict.

Action against the State began in Chepkurkur area (also known as phase 3) which has a special land history within the Chebyuk area. In Chepkurkur, residents, majority of whom were Bok, who had settled in the forest reserve, were driven out following the 1989 reforms. At the beginning of the 1990s, they successfully appealed directly to President Moi, who extended Chebyuk area by carving more land out of the forest reserve and allowed them to be resettled in Chepkurkur. However, he did not really make this resettlement legal. This government about-turn gave the green light for fresh settlements and the decision ended up benefiting other people than those who had appealed to President Moi. A rival Bok group from Cheptais managed to settle on this land. This group gained the support of John Serut (who was elected in 1998 and re-elected in 2002), who in turn protected them by delaying the implementation of phase 3 of the reforms. During the constitutional referendum in November 2005, Serut, who supported President Kibaki's camp, was disowned by his clients, the Bok land grabbers in

⁹ P. Ndung'u, Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, Nairobi, Government Printer, 2004, p. 229.

Chepkurkur and his close allies turned against him. Indeed, he could no longer satisfy their unquenched thirst for land. In an attempt to reinvigorate his support locally, he decided to push for the completion of the reform in Chepkurkur and 2.5-acre plots were created. This enabled double the number of people to benefit as opposed to the previous phases of settlement in Chebyuk (5 acre plots). However, the 1,732 parcels of land that were created were not enough to respond to the 7,500 applications received in 2006.

All political leaders had to contend with this local appetite for land. When the redistribution conducted by the government ended at the end of 2006, some Chebyuk residents had not received the land they had hoped to get. The last 35 years had given the Sabaot good reasons to believe that the State could intervene to “resolve” land problems. In their disappointment, they shifted their hopes to rumours of intervention by the World Bank and the British — over the issue of compensation for the appropriation of Sabaot land during the colonial era. With no more land redistribution exercises to hope for, forcing targeted people into exile, based on the model of the ethnic clashes of the 1990s, ended up being considered as an ordinary way of acquiring land. The crisis that has been going on in Mt. Elgon since 2006 is the result of this land-related and political manipulation. The government did not even for a moment have any doubts that it would succeed in evicting residents to satisfy official beneficiaries of the land. The formation of the Sabaot Land Defence Force, the core of whose membership is made up of people whose land was repossessed by government in Chepkurkur, is a straight proof to the contrary.

A LOCAL POLITICAL CRISIS

The political crisis in Chebyuk was two dimensional. It took the form both of a State legitimacy crisis and of violence with ethnic connotation.

State de-legitimization

The collapse of State authority and subsequent violence demonstrates a real crisis of legitimacy. State land distribution was incessantly mismanaged, challenged, cancelled and repeated for over 35 years. In 2006, the first targets of the violence were State agents (Assistant Chief, Chief, District Officer) or individuals linked to the State (surveyor, any person accompanying the surveyor, elders belonging to the land allocation committee). This defiance vis-à-vis the provincial administration doubled as defiance against elected representatives (parliamentary and local councillors). The crisis was also linked to resumption for political reasons of government control over the process of land reform. Ever since Chebyuk was created, the State has never relented to send security forces to enforce the boundaries of the settlement scheme or repossess land extended to the forest reserve and to take control of individual plots whose owners were not or no longer recognized. These measures of territorial control seemed arbitrary as the State, in exercising power, chose whether or not to apply the laws that it had passed. These practices were linked to the State's neo-patrimonial way of operating which contributed to discrediting it. A powerful individual could break the law which might only be enforced when the government found it worthwhile as an interested party. Consequently, rules were not the same for all. When breaking a rule seemed to favour the ordinary person, exceptions linked to the president's or a parliamentarian's personal power were welcome. Thus

some Sabaot still remember Kenyatta and Moss for giving them the land in Chebyuk. State neo-patrimonial practices, which were also a source of injustice, led to loss of legitimacy. The forestry department staff who were often under pressure and who sometimes gave in to temptation to use their institutional position to enrich themselves, were privy to these practices, and so was the head of family who was ready to corrupt an official in order to obtain a piece of land. These practices led to strong inequalities: if one did not know anyone or if he did not have the means to engage in corruption, he would not be served. There was no alternative, and even by paying someone off there was no assurance of obtaining what was sought after.

At all administrative levels, State agents used their position to favour some people at the expense of others, depending on political influence, financial means and personal interest. Moreover, when the local MP was in government, as it was the case for John Serut from 2003, he could use his influence and expect support from State apparatus. In some instances political leadership and administration would cross arms in others they would collaborate which made it easier to mismanage State apparatus: the land could be sold instead of being freely distributed and sold to people other than those officially targeted, the landless. Collusion of interests was identifiable under Kenyatta, Moi and Kibaki, even though under the latter an apparent will to change came into play and there was supposedly less political interference in the land redistribution exercise. However, President Kibaki was no doubt more sensitive to pleas for land from his Kikuyu clients and followers than to protests by the Sabaot, who were also hoping to benefit from Serut's allegiance to his government. Thus, the fact that almost all MPs who were elected in Mount Elgon were Bok worked in favour of the community during land distribution, although it should be stressed that there were rival factions and unstable personal political ties within the Bok community. With the end of an agricultural frontier in Chebyuk,

Mt. Elgon politicians were left with no land to redistribute to safeguard the allegiance of their clients. Nevertheless, land remained at the heart of political mobilization and it is upon this crest that Fred Kapondi rode and was elected in the 2007 parliamentary elections on an Orange Democratic Movement (ODM) ticket against John Serut, who vied on a Party of National Unity (PNU) ticket. The political transition was therefore directly linked to the land crisis. Beyond the land platform, ODM and Kapondi's victory was due to massive displacement of residents and to the fact that the SLDF, with which he was associated, had taken control of the ground. The political transition was also more a result of terror than democracy.

A good number of local leaders are now in agreement that if the government had properly carried out its duty at the beginning of the 1970s, when the settlement was initiated, and had once and for all set the legal framework for land ownership, the situation would be very different today. It is true that the government would have had nothing to worry about concerning the children of first settlers, in 1989, and their grandchildren in 2007. From the 1970s onwards, individual title deeds were issued in the areas neighbouring Chebyuk where therefore land ownership was legally recognized and family estates defined. On the whole, in spite of disputes over land inheritance, property was not challenged amongst the Sabaot in such areas. For their part, some old Chebyuk residents say that the crisis can be blamed on the reforms introduced in 1989 since the government did not recognize the importance of the social relationships that had been established locally, despite inequalities, between the Ndorobo, who came from up the mountain, and the Soy, who came from the lower slopes. By implementing the land redistribution program without proper consideration the government broke existing links forged by settlers while reclaiming the land together and strengthened separate Ndorobo, Bok and Kony identity claims.

Ethnicisation of the conflict

If we revisit the ethnic categories that actors themselves use in describing or explaining the violence and antagonism, it should be noted the intention here is to restate their historic dimension and give a vision of the strategic aspect of these identity assertions. As opposed to an essentialist conception of identity that is often revisited by protagonists or victims of a conflict, these categories need to be considered in a dynamic manner. Once violence that is seen as ethnic in nature takes place, fear, the need to protect and defend oneself and restore order contribute to bring out ethnic categorisation and strengthen (or even create from any aspect) the idea of ethnic belonging.

Locally, in Mount Elgon, a number of antagonisms were perceived in ethnic terms (e.g. Bukusu/Sabaot or Sabaot/Ndorobo). They were presented within a dynamic of unequal political competition between a majority and a minority. The conflict between the SLDF and the State since 2006 took an ethnic turn, mainly pitting two Sabaot sub-groups against each other, the Bok and the Ndorobo. It doubled up as a conflict between the Sabaot and the Bukusu at different times. Each level of antagonism might be mobilized on its own at one given time and seemed to replicate each other. Similar thinking of political polarization along ethnic lines was observed at different scales. The assertion of a Kalenjin identity was understood within the rivalry with the Luhya, the Luo, the Kikuyu and the Kisii for the sharing out of the land in formerly European areas. Following a similar pattern, the Sabaots asserted their separate identity against their Bukusu neighbours. A notch lower, within the Sabaot themselves, local identities were activated (Ndorobo and Bok) to obtain privileged access to the Chebyuk area. Therefore, in an attempt to break away from the other Kalenjin-speaking people of Mount Elgon, those who came from Chepkitala, by defining themselves as Ndorobo or Ogiek (hunter-gatherers) were laying claim to the forests and moors of Mount Elgon as part of their territory,

thus questioning the existence of Sabaot ethnicity and by extension of Kalenjin ethnicity. For its part, Ogiek ethnicity (hunter-gatherer in Kalenjin language) was able to grow, as shown by political contacts between all the Ogiek of the Rift Valley Province. Conflicts are detailed in ethnic terms but one might choose to stress one or another level of ethnic affiliation. Asserting a Ndorobo or Ogiek identity might be seen a strategy to reduce the size of the group sharing resources locally. Thus some opt to insist on their being part an infra-Sabaot community (Bok, Kony, Bongomek, Sabinyi) while others continue to talk of an all-inclusive Sabaot ethnicity. Found elsewhere in Kalenjin land, the terms Mosop and Soy simply refer to distinct topographical zones (highlands /lowlands) and by extension their inhabitants usually very closely linked through exchanges. In this context, they are sometimes used to denounce the ethnic drift and the introduced divisions in Mount Elgon. But more and more with the conflict, they have been changed into ethnic labels that emphasize a binary dichotomy between Ndorobo (Mosop) and non-Ndorobo (Soy).

According to a well established political discourse in Kenya (the *majimbo* ideology), a minority is entitled to demand for regional preference. Thus, just like the Sabaot, who managed to detach themselves administratively from the Bukusu, some Ndorobo would also deep down want to detach themselves from the Sabaot group. The Ndorobo demands caught Moi's attention at a time when he had decided to introduce land reforms in Chebyuk. Tension between the Sabaot and the Bukusu, which had been vivid at independence, were reactivated in the 1990s, when multiparty politics were reintroduced and Moi was seeking support from the so-called "minority" ethnic communities, and of the Kalenjins as a whole — to which the Sabaot and Ogiek belong — to remain in power.¹⁰ In 1993, the creation of

¹⁰ C. Médard, "Les conflits 'ethniques' au Kenya. Une question de votes ou de terres", *Afrique contemporaine*, No. 180, 1996, pp. 62-74.

Mount Elgon District was prepared by the 1990s ethnic cleansing operations and the expulsion of the Bukusu, who managed in spite of everything to remain in one location, Chesikaki. This manoeuvre was part of an offensive strategy adopted under President Moi by groups nationally considered as minorities (Kalenjin, Maasai, Mijikenda, among others) to counter the so-called majority groups based in various parts of the country (Kikuyus, Luhyas, Luos). The precise underlying idea was that access to land was defined in a territorial manner in Kenya on the basis of the historically established link between an ethnic territory and an administrative unit representing it. By extension, access to all the resources, including political resources, were defined territorially. This idea, which was undeniably modelled under colonial rule with the creation of ethnic “reserves”, together with politics structured on that administrative level in the 1950s, has been developing since independence. Some Sabaot propagandists suggested that their community’s land problems be resolved by driving out the Bukusu from the land that they occupy in Mount Elgon, Bungoma and Trans Nzoia districts, questioning the physical location of the existing administrative boundary not its principle (inclusion/exclusion). Targeted attacks against the Bukusu were carried out in the run up to elections and its aftermath (two attacks in Trans Nzoia in April and May 2007 where 15 people were killed, ethnic cleansing in Chesikaki during the first week of January 2008, in which 50 people died and finally attacks in some areas of Trans Nzoia in January 2008 followed by displacements). In the crisis pitting the Bok against the Ndorobo in Mount Elgon since 2006, the main protagonists were two political leaders, who are both Bok, – one, John Serut, seeking to retain his parliamentary seat and the other, Fred Kapondi, seeking to be elected. There were rumours that Kapondi had contributed to arming the SLDF while Serut was said to have opted to arm a militia group on the side of the Ndorobo. The formation of these militias or the political support

that they received contributed to ethnicizing the conflict. At one point, the Ndorobo became the target of increased violence from the SLDF as they represented the challenged authority of the local MP, who had links with security forces. In Mount Elgon, an exclusive conception of ethnicity is found at several scales both in an antagonism between the Sabaot and the Bukusu and in a conflict between the Ndorobo and the Sabaot.

In Chebyuk, State arbitrariness and the use of force spiralled out of control and the violence now targeted the State itself. During the years following independence, the neo-patrimonial State loudly and clearly used and abused the ethnicity card and the governed learned to do the same. In the 1990s, ethnicization of violence became the hallmark of the State. As a result, territorial and ethnic demands acquired momentum in the political arena. Resorting to militia also became a common practice by politicians from across the divide. The use of militias is nothing new in Mount Elgon what changed was the unprecedented scale in the SLDF's war and its declaration of war on the State.

MILITIA TURNING POINT: BUILDING A NEW ORDER?

Along the Kenya-Uganda border, there has been clandestine activity on the steep terrains of Mount Elgon and its forests and parks, which are mostly inhabited. Smuggling, cattle rustling, armed groups: during the decades between 1970 and 1990, the region was characterized by rather high insecurity. Mount Elgon was a transit zone for stolen livestock. Some of the raids were conducted locally, depending on the period. Theft of livestock was blamed on the Bagisu others on the Sebei of Uganda (the Bukusu and the Sabinyi of Kenya) and also on the Ndorobo of Chepkitale. The violence that preceded the current crisis might be described in ethnic terms but economic and political

considerations prevailed. It is now believed that such acts of livestock theft and smuggling were sometimes ordered by politicians and can be described as political thuggery. The State was unable to contain these practices at given times. The violence took on a new dimension with an ideological turn which started to prevail over economic considerations as it is currently the case in Mount Elgon. Thefts have developed into systematic killings and torture, which do not in any way rule out looting.

The first break in the violence happened in Chebyuk in mid-1980s. From then on there was a radicalization of demands for land by the Ndorobo in Chebyuk and Chepkitale. The coveted assets were no longer movable assets but land. Violence was legitimized by a discourse on the Ndorobo status as autochthons and on their territorial right to land, which should be understood within the scope and stakes of local land appropriation. This discourse on the indigenous status of some inhabitants was an initial step towards an exclusive conception of ethnicity. Concern about autochthons internationally relayed by websites reproduces the rhetoric without always understanding the local stakes.¹¹ In other words, these demands translated into targeted attacks on farms and cattle rustling in Chebyuk by Ndorobo militia carrying out operations from the forest. Frequent attacks led to insecurity which in turn had repercussions on the choice of the location of homes. The Bok and the Soy felt threatened in some parts of Chebyuk and the Ndorobo also felt unsafe in other parts. Among the Ndorobo, those who were moderates did not back the violent strategy adopted by others. In 2004, hundreds of houses were burned down in the settlement.

The emergence of the SLDF in 2006 was the second break: the force challenged the State directly and was not content with looting from the people. The militias that preceded SLDF, which were being used in some instances by minor political forces did not operate on

¹¹ Refer for example to www.ogiek.org.

the same scale. Up to the time Fred Kapondi successfully vied for the election, the SLDF might be seen as a guerrilla force with an alternative political agenda and not just any other militia used to satisfy the political ambitions of a leader. Resistance started from June 2006 when the State published the final list of land beneficiaries during the third and final phase of Chebyuk. The area in question, Chepkurkur had already been developed by the families that had settled there for over 10 years and who therefore refused to identify with the project aimed at redistributing "their land". The first SLDF militiamen were initially recruited from among these families. At a later stage, to counter SLDF, rival politicians formed rival militias (Bok, Ndorobo and very recently Bukusu¹²), which led to the increased insecurity and massive displacement of people locally. All the Chepkurkur residents were also driven out, some fearing the SLDF and others by security forces, the General Service Unit (GSU). They took refuge elsewhere, mainly in Cheptais where they had come from. The conflict thus spread from Chepkurkur to Cheptais, then to the whole of the cleared area in Chebyuk where settlement had stabilized during phases 1 and 2 of the resettlement, and finally to the rest of Mount Elgon District, with incursions going as far as Kapsokwony and Kaptama to the east. Internally displaced people (IDPs) who fled to Trans Nzoia District did not feel safe there either, even in Kitale, the district headquarters.

In Mount Elgon, the Ndorobo propagandists planted the seeds of identity retreat and of a restrictive conception of ethnicity at the end of the 1980s as demonstrated by the Sabaot-Ndorobo rift. As far as rhetoric is concerned, the SLDF did not lay emphasis on this level of antagonism even though there is evidence that the Ndorobo were targeted in the violence because of territorial claims over Chebyuk formulated by radical Ndorobo. The SLDF was first and foremost

¹² *Daily Nation* (Nairobi), 5 February 2008.

Sabaot before being Bok. Ideologically, what was new about this militia group was that it rejected the State.

On the southern slopes of Mount Elgon, the SLDF attempted to impose a new moral and political order. The religious dimension of the conflict merits mention. With the escalation of the conflict, there were increased references to a local prophetic tradition, greatly scandalizing some elders who chose to denounce the impersonation by self-styled prophets and rituals that did not belong to the existing heritage. Rumours about ritual performances were interpreted without any difficulty by the local communities, contributing to fear. For instance, according to one of these rumours targeting the SLDF at the beginning of the conflict, a pregnant woman was killed and her stomach opened to determine the future of the fighting. The gender of the child the woman was carrying would influence whether the war would continue or come to an end. The child was male and therefore the war went on. There was unanimity that the ritual killings and mutilations blamed on the SLDF had nothing traditional about them – the future is read in the intestines of an animal, not a human being. Within the context of traditional beliefs, prophets, who were supposed to predict the future and prepare youngsters to go to war, were extremely feared. Acts of sheer violence and torture created fear in the case of SLDF. The name of one SLDF politician cum prophet was mentioned: Fred Kiptum¹³, as well as a family of ritual leaders, the Psongoywo family. In Chepkitale, on the side of Ndorobo, the reputation of the Sangula family was established over the years: Sangula was a well-known prophet in the 1930s and his descendants have inherited his helm since his death. From April to June 2007, at the very moment of the strategic alliance between MP John Serut and a Ndorobo militia, his grandson, also called Sangula, strengthened his reputation of potency as a prophet while the SLDF was in a weaker position.

¹³ *Daily Nation*, 9 April 2007.

By living in a remote and mountainous area, out of reach of direct missionary activity, up to the time they were moved to Chebyuk, the Chepkitale residents were able to retain a local prophetic tradition longer than elsewhere. In sharp contrast, from the 1980s up to the current crisis, Chebyuk became the heart of intense missionary activity. One of the projects under implementation was the translation of the Bible into the Sabaot language. The project has been seen to fruition by an elders' committee with the help of linguists and pastors. The growth of Christianity has changed the outlook on some of the local customs. For instance circumcision celebrations, during which there was normally a lot of drinking, were sometimes criticized by converts. A number of elements pointed at the syncretism of the prophetic revival in Mount Elgon within the context of the current crisis. The SLDF also condemned alcohol. At a time when fortunes were progressively diminishing for the Ndorobo militia, in November 2007, the SLDF effectively took control of Chebyuk and stamped its authority locally. There was talk of a new moral order where the consumption of alcoholic drinks was restricted. Terror associated with the SLDF was based on the rumours about its neo-traditional religious practices when it was preparing for combat, reminding us of other movements in the region (from the Ugandan Lord's Resistance Army to the Mai Mai of the Democratic Republic of Congo). Reference to the Bible and to the Promised Land was significant: a verse which called the Israelites to combat was used before any attack. Though the rumours about the SLDF were difficult to corroborate, the terror that it spread was undeniable.

From the beginning, it put in place a taxation system; at one time, the tax was payable in form of airtime (mobile recharge cards worth Kshs 100, 200 and 300). Incidentally, the use of mobile telephone is evidence of a level of coordination and control over the actions taken. It underpins certain hypotheses on the movement's degree of

centralization. All those who had the ability fled in the face of the unremitting violence. This explains the growing difficulties the SLDF faced in getting supplies and funding its operations in the beginning of January 2008. Consequently, it carried out attacks within a wider area to loot people's property and steal livestock. Some of the people who did not flee might be considered as having been accomplices to the exactions but in reality all were prisoners and victims of the violence. Victims of the conflict also referred to the prophetic dimension local religious traditions to explain it: the Chebyuk land was cursed.

The Mount Elgon conflict is therefore rooted in very special soil and history. It, nevertheless, shares a number of common traits with other conflicts in Kenya: politically, neo-patrimonialism in crisis and ethnicization, and structurally, the population problem and access to land. The treatment of the crisis by security forces and leadership contributed to deeply entrench ethnic divisions locally. The crisis underlines the growth of ethnic categorization at another scale and by no means suggests the end of an approach to political competition in terms of ethnic belonging. The answer to the use of ethnicity by the State is ethnic mobilization against the State. The conflict sheds light on State neo-patrimonial practices and their perception. What seems to characterize State power is arbitrary measures, manifest authoritarianism, particularly when it does not recognize rights that are locally established, generally with its knowledge, and finally inequalities and injustices which its partiality contributes to create. Parallel to this, State legitimacy on the ground is certainly linked to its capacity to redistribute land. With the closure of an agricultural frontier, the neo-patrimonial practices of the ruling class continue in a new context of shortage. Among the Kalenjin in Mount Elgon, expectations along these lines were still to be found and they were disappointed. The SLDF attempted to put in place an alternative power and legitimacy which are close to a reign of terror.

Reference to the idea of grabbed ancestral territory scored renewed success throughout the whole of Rift Valley Province. The gravity of the criminal acts that led to expropriation of non-Kalenjin farmers during the crises of the 1990s were obliterated on the ground – these acts were even presented by various Kalenjin political players as legitimate. Does the Kalenjin case constitute an exception in Kenya? Have other groups put an cross on the idea of land redistribution carried out by the State? Nothing is less sure since in another area and for the benefit of another group, the Kibaki regime organized land redistribution: the Kikuyu displaced in the wave of violence in the 1990s were recently allocated land in the Burnt Forest area – this restoration explains the violence with which attacks were carried out against the Kikuyu in this area by Kalenjin militias as soon as the election rigging was announced.¹⁴

Due to lack of commitment, the will to change shown by the Kibaki regime did not materialize. Though, officially, there is serious belt-tightening (action against corruption, expulsion of “illegal” occupants of forest reserves), the government in Kenya still resorts to neo-patrimonial practices. These practices may have been legitimized in the past through strategies and rhetoric playing the ethnic card; it is no longer possible today, at least officially, due to the proclamation of a transition from President Moi’s corrupt regime from 2002 upon Kibaki’s accession to power. In the context of the current crisis, open strategies to promote exclusive ethnic interests could be used by opposing camps with disastrous results.

¹⁴ Hervé Maupeu, personal statement.

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PART III: FINAL REMARKS

KEY ISSUES IN DISENTANGLING THE KENYAN CRISIS:

Evictions, autochthony and land privatization

Claire Médard

In Kenya, as elsewhere, it is not unusual to construe in xenophobic terms the injustices that have been experienced. Grievances have been translated into a language of indigenous and territorial claims to land. Not going along with this rhetoric enables us to take the measure of existing injustices.

In order to cast light on the land problem in Kenya, we will define it at first in a simple way. We will limit our focus to cases of eviction of regular occupants of a piece of land, such as: landless peasants or squatters evicted from government land like gazetted forests (Mt. Elgon and Mt. Kenya forests, for instance); peasants who lost access to land following legal privatization (in relation to the gradual extension of land registration); peasants who lost their land in politically-instigated ethnic conflicts;¹ and finally peasants who were left out of land redistributions by the State to compensate cases of eviction.

On the whole, more and more youth from rural areas do not have access to land for cultivation. Some of them, who are educated, aspire for a different life. Those who will provide for their families solely from the land are few. This has been the case for a number of years, as demonstrated by migrations since the colonial days in search for

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¹ They can be referred to as such without losing sight of the essentially political dimension of "ethnic conflicts" (throughout the 1990s and during the 2007-2008 period, in particular).

work. However, it now seems a line is being crossed as less and less poor have access to land, even as a fallback resource. This is the case in towns as well as in the rural areas. Casting light on the recent crises through an analysis of population growth and land shortage would be the subject of a separate paper². In this paper, I have opted to carry out a political and legal analysis of the land crisis in order to underline its political dynamics. Despite structural constraints related to population and land, the recourse to violence should not be viewed as the only possible response nor should its legitimization through xenophobic political ideologies be seen as the only solution³. Since independence, violence has taken over from intense negotiations over land allocations, which led to a rather inequitable form of ethnic bargaining, to which today's State legitimacy crisis is linked. Kenya is no longer experiencing the momentum of land redistributions as in the 1960s and 1970s, which enabled the neo-patrimonial State⁴ to perpetuate itself in spite of corrupt and authoritarian practices.

From the simple definition that we gave in the beginning, it is worth noting that the problem of access to land and evictions is not as straight forward as expected. First, we will examine the issue of indigenous land claims separately from the issue of land injustices and inequalities, which then will enable us to understand how indigenous claims and neo-patrimonial practices by political leaders contributed to the current land crisis.

² J. Oucho 2002, V. Golaz 2002.

³ This term applies to Kenya in so far as it describes hatred for the 'other' within a national context.

⁴ The neo-patrimonial State's power is based on the confusion between private and public spheres. Refer to D. Bourmaud, 1988.

THE ISSUE OF AUTOCHTHONY

Whereas the language of autochthony⁵ tries to lock us in an essentialist vision of identity, it is inconceivable to grasp a phenomenon of this nature without considering it dynamically. The shaping of new identity platforms must be interpreted in their strategic dimension, in relation to the local, national and even international political context.

Autochthony is characterized in Kenya by territorial land claims that entertain the idea of local resources as belonging exclusively to those born and bred on the land. As such 'indigenous' communities and access to resources are defined in territorial terms. At the scale of a nation-state, the idea of a corresponding land-based community is widespread, but in this case autochthony is defined at a sub-national level. How can this be explained? In Kenya, the link made between land, territory and ethnicity has nothing to do with ancestry and is, first and foremost, part of an administrative tradition⁶. In the colonial era, administration contributed to shape ethnic territories by introducing the idea of reserved lands (ethnic reserves, White Highlands). Internal borders came to play a role in the territorial and ethnic definition of ownership of local resources, particularly land. This heritage translated into the current administrative practice of assigning citizens to regions of origin, a fictitious affiliation to a large extent in a context of widespread migrations at a national scale. The administration's pervasive territorial rationale is reflected, in its form at least, in the language of autochthony. The *majimbo* ideology, which emerged in the 1960s, then re-emerged in the 1990s, in the sunset days of Daniel arap Moi's regime, and again in 2007, during the presidential campaigns, backs autochthony from a political point of view. It advocates for a local and ethnic definition

⁵ For a discussion on autochthony, on claims to be 'sons of the soil', see Lonsdale J., 2008, *Journal of Eastern African Studies* Vol. 2, N° 2, 305-314. 'Indigenous land claims' might be seen as the words commonly used in Kenya to refer to the phenomenon of autochthony.

⁶ C. Médard, 1999.

of access to resources through administrative regions and calls for so to speak, regional preference or bias.

Autochthonous claims

The list of autochthonous claims is very long, even though those that caused ethnic violence are fewer. Examples abound and some of these claims might even take us by surprise because they refer to groups that are not always identified in ethnic terms at the national level. For instance, the Kalenjin, Luhya and Mijikenda umbrella identities might be divided into several sub-ethnicities - which can themselves, be subdivided into smaller units. One might choose to stress one level or another of belonging depending on a given context. In its own way each level of ethnicity has acquired a territorial basis. Some identities fit into each other like Russian dolls while others are locked in a binary opposition. In the case of fitted levels of identity there seems to be so to say no contradiction in stressing one or another level (national and ethnic identity, as well as sub-tribe) in a given situation. Nevertheless in some circumstances, they become incompatible, as shown by the example of denunciation of Kalenjin ethnicity by the various sub-groups which are supposed to belong under its umbrella. This happens especially in cases of territorial competition. These levels of identity assertion can in turn be understood in relation to levels of antagonisms (for example the Kalenjin against the Luhya or, at a lower level, the Sabaot against the Bukusu). Conflicts generally contribute to setting these levels of identity: in times of crisis, the Kalenjins unite against the Kikuyus or the Luhya and, at a lower level, in spite of their internal conflicts, the Sabaot gang up against the Bukusu. Ethnicity becomes flexible or rigid depending on the circumstances, and that is what needs to be kept in mind, just like the importance of underlying territorial resource-based stakes.

In the Rift Valley Province, the Kalenjin are laying a major claim on the land formerly held by Europeans, while the Maasai are claiming back former grazing land within their districts which have been cultivated by migrants from other regions of Kenya. Though these two communities have strong pastoral traditions, they are now staking claim on the land with a view to being in charge of their agricultural development. They refer to land evictions for which they blame a particular ethnic community collectively (Europeans, the Kikuyu, the Luhya, etc.). In addition to the overall Kalenjin claim to the Rift Valley Province, there are also separate demands for land by Kalenjin sub-groups: Sabaot, Pokot, Nandi, Keiyo, Marakwet, Tugen, Kipsigis, etc. These sub-groups sometimes come into direct competition with each other, as demonstrated by the incidents of conflict between the Pokot and the Marakwet in northern Marakwet, and the rivalry between the Nandi and the Keiyo in Uasin Gishu District over the repossession of European land. An internal conflict among the Sabaot⁷, which brought about ethnic polarization along the lines of two sub-groups namely the Ndorobo (or Ogiek) and the Bok, led to unprecedented incidents of violence in Mount Elgon in the period preceding the December 2007 elections. At stake was the control of land resources through control of political power. The up-scaling of the conflict from an intra-Sabaot one to one between Sabaot and Bukusu neighbours, which is a reminder of the conflicts in the 1990s, might be viewed as an outlet intended to satisfy the need for land among the Sabaot with the expulsion of the Bukusu from a wider area.

The indigenous claim by the Ogiek or Ndorobo in Mount Elgon, is not an isolated case in the Rift Valley Province. The identity statement by the Ogiek emphasizes an autochthonous right to land and a separate ethnic identity, with regard to the rest of the sub-groups of Kalenjin speakers. An alliance between the various groups that claim a “hunter-

⁷ C. Médard, 2008.

gatherer" identity in the Rift Valley Province has appeared. The Sengwer who live the Cherangani hills, the Ogiek of Mount Elgon and Mau forests claim to be in a way more indigenous than other Kalenjin-speakers in the Rift Valley: a discourse which backs the demand for privileged access to forest resources, which does not preclude the conversion of forests into agricultural land.

In the 1990s other claims of indigenous nature, along the coast, in central (in the Meru and Embu districts) and also in western Kenya were voiced. During the colonial days the border between the Luo and the Luhya was disputed, not any more despite some lingering demands. In Nyanza Province occupied by a Luo majority, the Basuba and Kuria separations were incited by the Moi regime. Demands by the Teso in Western Province, occupied by the Luhya majority, caused a crisis. Tensions translated more into administrative demands (border reviews and creation of new districts) than into demands for land in these cases. Along the coast, land is a major contentious issue. The level of Mijikenda ethnicity has been defined in relation to a Swahili identity within an urban context in Mombasa.⁸ During the 1990s, a conflict orchestrated by powerful individuals within the Moi regime, exploiting xenophobic sentiments, pitted the Mijikenda against the upcountry people. At a lower notch, rivalries between various Mijikenda sub-groups emerged. Thus, along the coast as well as in Western and Rift Valley Provinces, the *majimbo* ideology, that is based on the idea regional preference was advocated for by local politicians at different times in history.

Ethnic identity statements, be they more or less manipulated or instrumental, are all political in nature.

⁸ J. Willis, 1993.

Autochthony and evictions

Autochthonous discourses that have emerged since the 1980s, are at the crossroads between local land grievances and international platforms interested in indigenous groups, particularly the Ogiek and the Maasai, and also, at a different scale, between national and local political strategies. Indigenous claims came to be known through violence in 1990s.

Xavier Péron emphasizes that in the 1980s there were several groups advocating for indigenous platforms among the Maasai fighting for different ideas of “common” interest. Local authorities in Narok tried to make their presence felt in international circles in the defence of indigenous people’s rights in the same way as non governmental organizations who were fighting against them on a daily basis⁹. To mention just an example, the activities of the local authorities went against the local community’s interests in the management of Loita Forest, at a time when local authorities sought to transform the area into a second Maasai Mara with the exclusion of its regular residents. Examples of abuse of office, corruption, amassing of wealth by local political leaders and eviction of ordinary residents were not going unnoticed and some NGO voiced their condemnation. The issue of repossession of this indigenous platform by political leaders, whose objective was merely to maintain themselves in power and to guarantee their own access to resources, re-emerged more clearly in the 1990s.

The Moi regime, which was then under threat due to the reintroduction of multi-party politics, tried to perpetuate its rule by all means including the encouragement of xenophobic violence and a political alliance around the Kalenjin and ‘minority tribes’. National political strategy and local demands merged in the KAMATUSA¹⁰ claims on the Rift Valley Province, to which are associated different

⁹ X Péron, 1996.

¹⁰ Kalenjin, Maasai, Turkana, Samburu.

incidents of violence organized by Maasai, Kalenjin and Samburu leaders in the 1990s. The Kikuyu and the Gusiis settled in the Maasai districts were targeted in evictions orchestrated by Maasai leaders with some complicity on the part of the administration. The Kikuyu, the Luhya, the Gusii and the Luo settled in areas west of Nakuru were targeted in violence organized by Kalenjin leaders still with some complicity on the part of the Moi government.

The violent trend observed in autochthonous claims cannot as such be explained by their artificial nature, which should however be emphasized, since it has been instrumental for political strategists. Autochthonous claims have been used for political gain. Autochthony, as a political discourse, legitimates the recourse to violence to settle land grievances. A territorial definition of land ownership as supported by some political leaders is presented as a means to fight evictions viewed in ethnic terms.

The principle of political autochthony, backed by some leaders, made it possible to legitimize untold violence. Trapped in the local and national discourses on autochthony, some international institutions provided alibi for this violence. No leader is ready to commit political suicide by admitting that the hijacking of access to land by politicians is the root of major land problems, unless it means denouncing a political rival or better still accuse an ethnic community that would shoulder the blame for its leaders. This explains the success of autochthony. The political position of defending autochthony enables a leader to hide his real motives while acting as the champion of a collective cause such as land. Nevertheless, the fight is said to be collective while the gains are individual. Leaders of these communities began by eating themselves, as shown by the examples of D. arap Moi and William ole Ntimama, a Maasai leader who is still active in 2008.

Land grabbing is the best shared activity among the different

generations of political leaders in Kenya. Combined with a territorial strategy that is rooted in the ideology of autochthony, the damage they have caused has not yet been measured. In Kenya's recent history, some leaders, regardless of their ethnic affiliation, have preferred chauvinistic stances and xenophobic political mobilization to denouncing corrupt political practices. Mobilisation across the ethnic divides against corrupt political practices still remains minimal, despite parliamentary reports which provide evidence.¹¹ In Trans Nzoia District, a movement initiated by Father Dolan was quickly quelled by a class of administrators and politicians. Whereas inequalities in accessing land result above all from political options and practices, they are generally presented in ethnic terms.

LOCAL LAND SITUATION AND EVICTION PROCESSES

Legal privatization of land has been presented as a solution to all problems. It is enough to highlight the importance of the paradigm of the title deed in a context of obvious tension over land and the emergence of a territorial stake in land outside the scope of legality.

The first attempt to control the reproduction of African societies was territorial in nature. By introducing internal borders, the colonial government blocked settlement frontiers and movements of pastoral people. The key arrangement for colonial land evictions was legal (through the creation of the legal fiction that crown land represented)¹². African settlements, now restricted in their expansion ended up getting the legal status of communal land (*trustland*). In the next stage, the transformation of access to land was characterized by a legal process of land registration. The early introduction of land privatization is

¹¹ Republic of Kenya, 2002, 2004.

¹² H.W.O. Okoth-Ogendo, 1991.

undoubtedly not foreign to the success of today's legal privatization paradigm. Legal private land ownership spread to African areas in the 1950s from the European lands. Title deeds were considered as guaranteeing security of tenure. Nevertheless, the introduction title deeds contributed to the creation of new rules of access to land that destabilized the previous forms of regulation. The fact that legal privatization became synonymous with security of tenure, at the discourse level, conceals the injustices that its implementation gave rise to and negates the fact that the two terms are far from being equivalent. In the context of recent ethnic conflicts, the title deed was worth nothing in the face of territorial claims that go beyond it and define legitimacy of access to land at a non statutory level. It is worth noting, despite everything, that the situation of people who had title deeds, in relation to others, was different in the medium-term. The title deed, where it existed, was a form of guarantee, insofar as land could not be repossessed by a third party without other formalities. In 2008, a step further was taken within the urban context with regard to awareness about this legal obstacle: some gangs endeavoured to demand the title deed in addition to confiscating the property. Safeguarding ownership is not necessarily synonymous with privatization, except that today the title deed has become the panacea. Nevertheless, the extent of legal privatization and the idea that it is operative are another fiction that needs to be denounced. From local histories, a wide range of situations exist in Kenya. They relate to land regimes and specific forms of land ownership that also contribute to explaining particular forms of expropriation that have locally emerged.

Some regions were subject to a legal process of land registration, others, mainly the arid regions, were not included. Registered land is found mainly in the most fertile regions, in the highlands of the south western quarter of the country. Yet, even in this part of the country, the process is blocked in some places. In areas where land registries exist

and where it is in theory possible to get a title, in practice, ordinary residents don't always have access to them. Areas where it is possible to get a title enter into two broad categories: areas where land registration was introduced more than thirty years ago; and areas where large-scale farms were kept largely intact.

In the former trust lands registered from the 1950s up to the 1970s, in Central, Western and Nyanza provinces and in some districts of the Rift Valley province, legally defined family estates exist since the land was generally registered in the name of a grand-father. Titles have not necessarily been collected from the administration unless the need was felt (for instance in cases of land transactions). The grandfather's land, at present too small to sustain all his descendants, might be considered now as clan land: it serves for burials, when no other land was acquired in a life-time. Large-scale farms in the former White Highlands which might have been transferred to African owners and only minimally subdivided also have titles.

To obtain a title deed is nearly impossible in some places located in the highlands, even though the area under trust land has shrunk and most lands have undergone registration, though they might be at different stages of the programme implementation. In some instances the process of land registration was blocked by conflicts and by the slowness of bureaucratic procedures. Titles are also difficult to get in former European areas, in cases where large-scale farms were subdivided into many shares; as well as, in particular settlement schemes on government land such as Chebyuk in Mount Elgon.

During the 1980s and 1990s, the process of land registration was carried out in some parts of Kenya such as Meru, Marakwet or Trans Mara and experienced many difficulties which slowed it down. It sparked violence, because the legal process of land individualization and privatization was seen as a way to redefine land rights on a territorial

basis: only a given group is entitled to land in a given location. Due to this, the rights of some old time residents were not recognized during the registration process. In areas where land registration was introduced first, individually demarcated plots existed. In spite of this fact land evictions were organised or could not be prevented given the rules laid out for land registration. When actual occupation of land did not provide landmarks for individual property, as it is often the case in pastoral regions, the possibility of losing access to land was multiplied. In the pastoral zones, the process of land registration went through several steps, which constituted as many renewed opportunities for evictions. During the first stage, collective ranches were put in place. Their creation did not preclude the possibility of introducing individual ranches, quite the opposite. Influential people hastened to start private ranches, at the same time sabotaging the spirit of the collective enterprise. During a second phase, the directive became legal privatization of the entire land, with renewed consequences in term of inequalities in sharing land and access to resources. The legal framework of the reform has been used or misused by a ruling class for its own benefit.

Former European lands also went through a process of subdivision, in several stages. Today when farms are subdivided in large portions of land, the processing of titles is expected to take four years with the help of a lawyer specialized in the field of land administration and rights. In the case of large-scale farms subdivided in numerous plots for the benefit of a large number of recipients (land buying companies or cooperatives), issues of management, usurpation of rights and financial difficulties make it impossible to get a title. According to an official source, in 2007, among the twenty land buying cooperatives bordering to the natural reserves of the Mt. Elgon in Trans Nzoia, only two succeeded in getting individual land titles for their members. To acquire a title is a long process which requires funds and determination

and brings out inequalities. Members of land-buying companies are especially vulnerable in this regard and some members are evicted with ease through various strategies. During the ethnic clashes of the 1990s, everywhere in the Rift Valley province, membership in land-buying companies was highly disputed; with no real legal mechanism to guarantee land ownership.

Forests, under the direct control of government, have been considered widely like potential land reserves, as demonstrated by the Moi regime. Although classified, forest land was converted into agricultural land in a temporary or permanent way. Whether they were classified as governmental land (under the jurisdiction of the central power) or as trust land (under the jurisdiction of local authorities), they have been managed without a long-term policy, and access set in a discretionary way. In accordance with its neo-patrimonial practices, the State decided whether or not to apply some rules concerning the protection of forests or distorted them for its own profit or political gain. As a result, at times, people are allowed to engage in different activities in the forest reserves and, at times, they are not, an occurrence creating strong resentment. This mode of government has left its imprint in Mount Elgon and Mount Kenya. It is responsible for an ecological disaster in the Mau escarpment. Kipsigis farmers managed to buy land in the forest reserve of the Mau through the making of corrupt political leaders both Kipsigis and Maasai from 1997 to 2004. It took time for the new Kibaki administration to put an end to this colonization¹³. The settlers ended up by being chased, after having destroyed the forest. As a result, and this is not unusual in Kenya, the person who actually bought the land was evicted whereas the politicians who actually made the deal and ended up benefiting from the transactions were not disturbed. Forest lands under the protection of local authorities, such as part of the destroyed Mau forest, were not managed in a better way.

¹³ D. Ruysschaert, 2007.

Local authorities have in some cases organised the stealing, whereas they were supposed to manage forest resources for the benefit of the ordinary residents of the locality.

Conclusion

The idea of a territorial claim to land, defined by administrative limits, without taking into account work invested in land but rather autochthonous demands, is presented by some leaders as a strategy to fight against evictions understood solely in ethnic terms. This type of discourse has, to some extent, justified the recourse to violence and has contributed, through the conflicts it created, to more land evictions. Is there a peaceful territorial solution to land problems in Kenya? In the past there have been strong pressures to translate political autochthony into law and this might happen again in the context of the management of the post-electoral crisis.

Over the years, the State's hesitations over the issue of territorial and ethnic claims to local resources are noticeable: backing them then taking a legal stance in defence of the right to individual property. In principle, a title does not take into consideration neither the place nor the person, neither are the means by which a title is acquired questioned. During the 1990s, political autochthony sustained by the Moi regime contributed to create confusion.

From a different perspective the Bomas constitutional project¹⁴ also reflects this hesitation, by insisting both on the protection of individual rights and at the same time referring to ancestral rights to land. In a way it attempted to circumscribe the legitimacy of autochthonous claims: only hunter gatherers were specifically mentioned as entitled to

¹⁴ The Bomas constitution was drafted by the Kenyan Commission set up to revise the constitution. It was amended and became the Wako constitution, then rejected during the referendum of November 21, 2005.

claim for such rights. However, autochthonous claims are common in Kenya and contradict the idea of the sanctity of private property: they might not be so easily contained.

If the State is serious about accommodating these two apparently contradictory positions, it should come up with a system of compensation for legal acquisitions of land outside one's autochthonous "territory" for people who had bought land in an area they do not "belong" to. In many cases, political and administrative intermediaries benefited financially from the sale of land everywhere in Kenya and created the problem. The best would be to force the actual thieves or crooks, which most commonly belong or belonged to government, to pay for compensation.

Autochthonous claims defend the idea of a collective responsibility in evictions, blaming them on another ethnic group: the Europeans chased the Sabaots from Trans Nzoia, in turn the Sabaots attempted to chase the Bukusius who had settled in the European land of Trans Nzoia. This perception should be discarded as it carries in itself injustice. On the other hand, individual cases of land confiscations should be documented in order to attain justice and redress blatant cases of evictions. Why is it so important to protect the rights of the poor and their access to land? One might reasonably consider land as a fallback resource. The importance of access to land is illustrated by the obsession of buying a plot. Buying a plot is seen as a necessity by many, a dream that only a few people, belonging to the middle class, will achieve today, while choosing the location carefully taking into account ethnic and territorial considerations.

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This book is a translation of a special issue of IFRA's journal *Les Cahiers d'Afrique de l'Est*, n°37, and of a collection of articles from *Politique Africaine*, n°109. **These both** focused on the General Elections in Kenya at the end of 2007. The on-site presence of several researchers (Bernard Calas, Anne Cussac, Dominique Connan, Musambayi Katumanga, Jérôme Lafargue, Patrick Mutahi), fieldwork carried out by others between December 2007 and February 2008 (Florence Brisset-Foucault, Ronan Porhel, Brice Rambaud), as well as a good knowledge of the country by researchers on regular visits (Claire Médard, Hervé Maupeu), were all ingredients that led to the production of hundreds of pages within a limited period. These articles were actually published in April 2008. Some political information has not been updated but this changes nothing in terms of the initial aim of taking into account and analyzing the events that set the country on fire for several weeks.

However, since April 2008, the situation—to all intents and purposes—stabilized. The coalition government took shape, with Mwai Kibaki remaining President while Raila Odinga became the Prime. The country, more so than ever, is truly in suspense. This includes the donors, who had made it possible for Kenya to restore a semblance of peace. But to what point will they be interested in investing in the country and to protect their place in it?

The tone of this book may, undoubtedly, not sound highly optimistic. However, this should not dampen the unanimous sense of hope in the country that the political and social situation will once more be more than just tolerable.

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